

# TERMS OF BUSINESS FOR THE INTRODUCTION AND USE OF SERVICES OF TEMPORARY WORKERS

## 1. DEFINITIONS

'Agent'	The Nursing Services of South Africa (Pty) Ltd.
'Assignment'	Period during which the Temporary Worker is engaged by the Client to render services to the Client.
'Client'	Person, firm, unincorporated body or corporate body together with any subsidiary or associated company as defined by the Companies Act South Africa to whom the Temporary Worker is introduced.
'Engagement'	Engagement, employment or use of the Temporary Worker by the Client whether under a contract of service or for services, or under an agency licence, franchise or partnership agreement or any other engagement.
'Temporary Worker'	Person introduced by the Agent to the Client and engaged by the Client to carry out an Assignment.
'Introduction'	Client interview of a Temporary Worker in person or by telephone, following the Client instruction to the Agent to search for a Temporary Worker, or the passing to the Client of a curriculum vitae or other information which identifies the Temporary Worker and which leads to an Engagement of that Temporary Worker by the Client.
'Remuneration'	Includes annual base salary, guaranteed and / or anticipated bonus earnings, allowances, inducement payments and all other taxable emoluments payable to or receivable by the applicant to or on behalf of the Client.

*References to singular may include plural and references to masculine may include feminine and vice versa.*

## 2. THE CONTRACT

- 2.1 These Terms of Business govern the basis upon which the Agent introduces Temporary Workers to the Client to work on Assignments for the Client. This contract of services shall not give rise to a contract of employment between the Client and the Temporary Worker.
- 2.2 These Terms of Business are deemed to be accepted by the Client by virtue of its request for an introduction of or an interview with a Temporary Worker introduced by the Agent or the Engagement of a Temporary Worker introduced by the Agent. The Client acknowledges that the Agent has arranged the Assignment.
- 2.3 Unless otherwise agreed in writing by a director of the Agent, these Terms of Business shall prevail over other terms of business put forward by the Client.
- 2.4 No alteration of these Terms of Business shall be valid unless agreed in writing by a director of the Agent.
- 2.5 The Client authorises the Agent to sign / agree to, on behalf of the Client, the contract for services of Temporary Workers.
- 2.6 These Terms of Business shall commence on the earlier of the date of signature by both parties or the introduction of a Temporary Worker and shall remain in force until terminated in writing by either party.

## 3. PAYMENT AND CHARGES

- 3.1 The Client agrees to make payments to the Agent in accordance with the rates shown in the Client rate sheet in force at the time of the Assignment unless otherwise agreed in writing between the Agent and the Client. The sums payable are comprised mainly of the Temporary Workers gross remuneration which is calculated according to the number of days / half days / hours (to the nearest quarter hour) worked by the Temporary Worker but also includes any other statutory entitlement of the Temporary Worker and statutory charges made on the Agent. The statutory entitlement and statutory charges represent the Agent's best estimate of the liability and are payable to the Agent irrespective of any ultimate final liability the Agent may have. Travel, hotel or other expenses as may have been agreed with the Client may be added to the rates shown. Amounts payable also include the Agent's charges for the introductory service. The Client may not pay the temporary worker direct. VAT is chargeable.
- 3.2 The charges may be varied with immediate effect from time to time during an assignment upon notification to the Client. It is recognised that charges may need to vary in order to ensure compliance with legislation (specifically but not exclusively equal treatment for Agency Workers as contemplated by Section 198A of the Labour Relations Amendment Act 2014). Any such changes shall include all statutory charges (or best estimate thereof) and the Agent's charges.
- 3.3 The Agent's charges and the relevant payments referred to in this clause 3 are invoiced to the Client on a weekly basis and are payable within 14 days.
- 3.4 The Agent reserves the right to charge compound interest on overdue amounts at the rate of 7% per annum above the prime rate from time to time of the South African Reserve Bank from the due date until the date of payment. In the event of non payment of invoices over 90 days, outside collection agency and attorney fees shall be charged on an attorney client scale.

## 4. RECORD OF HOURS WORKED

- 4.1 At the end of each week of an Assignment (or at the end of the Assignment if for a period of one week or less or it is completed before the end of a week) the Client shall sign a time sheet verifying the time worked by the Temporary Worker during that week and shall deliver or fax the time sheet or other written record to the Agent.
- 4.2 Signature of the time sheet by the Client indicates satisfaction with the services provided by the Temporary Worker and confirmation of the time worked.
- 4.3 In the unlikely event of the Temporary Worker or the Agent mislaying time sheets this does not alter the Client's liability to pay for hours worked. Notwithstanding this liability in the event of work being claimed in the absence of time sheets the Client agrees to co-operate fully to restore the situation whether by locating Client held copies of the original time sheet, accepting an obligation to check documentation sent in lieu of misplaced time sheets and in such circumstances, to notify within three weeks of receiving such documentation if the work was either not performed or performed unsatisfactorily. If notice is not given within three weeks the work will be deemed performed satisfactorily and the Client will become liable for full payment for services provided.
- 4.4 The Client shall not be entitled to decline to sign a time sheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Client should apply the provisions of clauses 7 & 8.



## 5. REMUNERATION AND DEDUCTIONS

5.1 The Client is responsible for paying the Temporary Worker and shall make such payment through the Agent who will operate as a payroll service by passing all payments to the Temporary Worker after making all necessary deductions in respect of PAYE / Income tax, and any other normal / statutory deductions. The Agent will ensure that those deductions are passed to the relevant authorities on behalf of the Client.

## 6. ENGAGEMENT FEES

6.1 The re-engagement by a Client of a Temporary Worker introduced by the Agent, or the introduction by the Client of a Temporary Worker to any third party resulting in an Engagement (or, where applicable, if the Temporary Worker has become incorporated under a limited company, the Engagement of that limited company) renders the Client subject to the payment of an introduction fee calculated as a % of the annual gross taxable remuneration / emoluments payable to the Temporary Worker (as shown below), provided that the engagement takes place within a period of 12 months of the end of the Assignment under which the Temporary Worker was last supplied, or, if there was no assignment, within 12 months of the introduction of the Temporary Worker by the Agent.

ANNUAL GROSS REMUNERATION	FEE
Up to R120,999	17.5%
R121,000 - R240,999	20%
R241,000 - R360,999	25%
R361,000 - R480,999	30%
Over R481,000	35%

6.2 In the event of any direct Engagement of the Temporary Worker as contemplated in clause 6.1, the Client shall immediately notify the Agent of such planned / actual Engagement and provide details of any remuneration payable to the Temporary Worker.

6.3 Where the Client fails to inform the Agent of the annual remuneration, the introduction fee will be calculated by multiplying the charge rate payable by the Client under clause 3 above to the Agent by 280.

6.4 No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates.

6.5 VAT is payable in addition to any fee due.

## 7. LIABILITY AND HANDLING OF DATA

7.1 Whilst every effort is made by the Agent to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to introduce them in accordance with the Client's booking details, the Agent is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of Assignment or from negligence, dishonesty, misconduct or lack of skill of the Temporary Worker.

7.2 Temporary Workers are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client recognises that apart from ensuring that the Temporary Worker possesses the necessary qualifications, the Agency has no means to evaluate their skills and knowledge in practise. Therefore the Client undertakes to provide the Temporary Worker with the necessary orientation, training, guidance and assistance in relation to their Client's specific procedures, protocols and working environment, including but not limited to:

7.2.1 The procedure to be followed in any emergency situation;

7.2.2 The normal working hours of the Client applicable to the premises of the Client at which the Temporary Worker is to render services;

7.2.3 Security requirements of the Client;

7.2.4 The normal reporting procedures of the Client.

7.3 The Client acknowledges that it is responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though he was on the payroll of the Client.

7.4 The Client shall also advise the Agent of any special health and safety matters about which the Agent is required to inform the Temporary Worker and will ensure compliance with any obligations. In particular the Client confirms his / her / its obligations to perform a thorough risk assessment of the proposed working location(s), equipment and working conditions. The Client hereby agrees to, without delay, provide details of any expenses payable by or to the Temporary Worker, the nature of the working location(s), equipment and working conditions and to provide a copy of the risk assessment carried out by the Client. The Client will co-operate with the Agent in relation to any assessment of the risks at the premises where the Assignment is to be carried out and will provide all relevant information upon request to the Agent.

7.5 The Client shall indemnify and keep indemnified the Agent against any costs, claims or liabilities incurred by the Agent arising out of any Assignment or arising out of any non-compliance with clause 7.2, 7.3, 7.4 and clause 8 and / or as a result of any breach of these Terms of Business by the Client.

7.6 The Client recognises the need for the Agent to handle / process information relating to the Client and that the Agent may need to share such information with its agents or third parties as part of performing its duties. The Client recognises such obligations on the Agent and hereby consents to the handling, processing and divulging (whether in the RSA or elsewhere) of such information as may be necessary for the Agent (or its agents) to perform its duties.

## 8. CLIENT OBLIGATIONS

8.1 The Client recognises that the Agent and the Client have obligations to ensure full compliance with the requirements of a range of legislative issues including but not limited to the Labour Relations Act 1995, the Basic Conditions of Employment Act 1997, the Labour Relations Amendment Act 2014, any binding collective agreement, wage determination and arbitration award. The Client agrees that it will assist and facilitate the Agent in meeting any obligations imposed by these and similar requirements.

8.2 The Client recognises that in the event of a breach of the above by the Client which causes the Agent to suffer any financial prejudice, loss or damages, the Agent may recover such prejudice, loss or damages from the Client.



- 8.3 The Client will comply with all of the Agent's requests for information and any other requirements to enable the Agent to comply with obligations imposed on the Agent or the Client (whether individually or joint and severally). In particular the Client undertakes to provide to the Employment Business details of any Assignment including but not limited to the following:
- a) the type of work that the Agency Worker would be required to do;
  - b) the location and hours of work;
  - c) the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
  - d) any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - e) the reason the Client requires the service of the Agency Worker;
  - f) the date the Client requires the Agency Worker to commence the Assignment;
  - g) the duration or likely duration of the Assignment;
  - h) written details of all working and employment conditions the Agency Worker would be entitled to for doing the same job as if the Agency Worker had been recruited directly by the Client as an employee or worker.
- 8.4 The Client shall inform the Agent immediately and in writing of any:
- a) oral or written complaint the Temporary Worker makes to the Client which is or may be a complaint connected with rights conferred to the Temporary Worker under, in particular, the legislation referred to in clause 8.1 above; and
  - b) written or verbal request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any complaint / request is made to or written complaint request is received by the Client and the Client 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 Client's receipt of such a request.
- 8.5 As the Temporary Worker is not, save as directed by appropriate legislation, an employee of the Client, the Client will not be entitled to take any disciplinary action against a Temporary Worker. However the Client hereby agrees to cooperate fully with the Agent and provide the Agent with such information and assistance including but not limited to the giving of verbal and/or written information regarding any alleged transgression by a Temporary Worker which the Agent may require for purposes of assessing whether disciplinary or corrective action should be taken against any Temporary Worker.
- 8.6 In the event that the Agent deems it fit to institute disciplinary action against any Temporary Worker, corrective and or disciplinary action will be taken by the Agent in discussion with the Client. In the event that a disciplinary / poor performance hearing is required, the Client undertakes to make available any information or witnesses to enable the Agent to put forward the facts of the alleged transgression.
- 8.7 The Agent will not be obliged to remove any Temporary Worker from the Client premises as a result of any alleged disciplinary or corrective action unless and until the Client has complied with its obligations to cooperate with and assist the Agent in respect of such disciplinary and / or corrective proceedings, thereby affording the Agent reasonable opportunity to implement fair labour practices.
- 8.8 To the extent that prevailing legislation dictates that the Agency Worker shall be deemed to be an employee of the Client, then the Client shall co-operate in full with the Agent and meet all associated costs (including Agent's charges) so as to ensure full and fair treatment of the Agency Worker in accordance with all prevailing legislation.
- 8.9 The Client will also comply in all respects with all statutes including, bye-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 5 above), including in particular the provision of adequate Employers and Public liability Insurance cover for the Temporary Worker during each and every Assignment, access to shared facilities and access to vacancies.
- 8.10 To the extent that the Client takes (or fails to take) any actions which (a) result in a breach of any prevailing legislation and (b) leads to any cost, claim or liability being levied against the Agent then the provisions of clause 7.5 shall apply.

## **9 TERMINATION AND COMPLAINTS**

- 9.1 The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory then provided that the Client acts within the following time frames:
- a) within four hours of the Temporary Worker commencing the Assignment where the booking is more than seven hours; or
  - b) within two hours for bookings of seven hours or less
- the Client may, subject to this Agreement and to all prevailing legislation in the Labour Relations Amendment Act 2014, terminate the Assignment by instructing the Temporary Worker to leave the Assignment immediately. In such a situation the Client must notify the Agent immediately in the event of the termination of any Assignment. The Agent may in such circumstances reduce or cancel the charges set out above in respect of the time worked by that Temporary Worker provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Agent within 24 hours of the termination of the Assignment.
- 9.2 For any Assignment not governed by the 'deemed employee' provisions of the Labour Relations Amendment Act 2014 (specifically but not exclusively the insertion of section 198A) if the Client wishes to reduce, cancel or amend the booked services of the Temporary Worker the Client must give the Agent at least 24 hours notice. Failure to do so will result in a cancellation fee being charged equal to four hours.
- 9.3 The Client is reminded that any termination as exercised by the Client must take full account of all appropriate legislation including, but not limited to, the Labour Relations Amendment Act 2014.
- 9.4 Where the Client has any cause for concern or wishes to make any complaint about the services provided during the Assignment, the Client shall submit such complaints to the Agent and such complaint shall be dealt with in accordance with the Agent's complaint procedure. A copy of the Agent's complaints procedure will be supplied to the Client and to anyone who requests a copy of the procedure on behalf of the Client.

## **10 FORCE MAJEURE**

- 10.1 The Agent will, if so requested by the Client, use its best endeavours to ensure continuity of services of a Temporary Worker throughout the Assignment. Should the Agent's obligation to do so be materially interrupted or interfered with by any force majeure, then such obligation shall be suspended while the interference or interruption continues and the Agent will not be liable for any loss the Client suffers or costs incurred as a consequence of the interference or interruption.
- 10.2 Both parties to this contract agree to use their best endeavours to minimise and reduce any period of suspension caused by an event of force majeure.
- 10.3 The expression 'an event of force majeure' includes but is not limited to fire, flood, casualty, lockout, strike, labour disputes, labour shortages, industrial action of any kind, unavoidable accident, breakdown of equipment, national calamity or riot, Acts of God, the enactment of any Act of Parliament or any other legally constituted authority, any cause or event arising out of war, or any other cause or event outside the reasonable control of either party to this contract.



**11 LAW**

- 11.1 These Terms are governed by the law of the Republic of South Africa and are subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.
- 11.2 The parties hereby consent to the jurisdiction of the Magistrate’s Court having jurisdiction in terms of Section 28 of the Magistrate’s Court Act as amended from time to time, notwithstanding the fact that the amount in dispute may exceed the jurisdictional limits of the Magistrate’s Court as amended from time to time, provided that this clause shall in no way derogate from either party’s right to institute proceedings sued out of the appropriate High Court having jurisdiction over the parties.
- 11.3 Notices required to be sent by either party to the other in terms of this agreement shall be sent / delivered either by hand or prepaid registered post or telefax to the other party’s domicilium address as stipulated hereunder.
  - 11.3.1 The parties hereto choose the following addresses / telefax numbers as their domicilium citandi ex excutandi for the purpose of service of all notices and legal process arising out of this agreement as follows hereunder:

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(a) The Client	Physical address:	
	Postal address:	
	Telefax:	

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(b) The Agent	Physical address: 107 Voortrekker Road, Bellville 7530	Postal address: P.O. Box 327, Bellville 7535
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- 11.3.2 Any notice:-
  - (a) delivered by hand shall be deemed to be received on the date of delivery;
  - (b) delivered by registered post shall be deemed to be received four (4) days after date of posting per registered mail;
  - (c) dispatch by telefax shall be deemed to be received the day after dispatch.
- 11.4 In the event of a breach by the Client any of its obligations to the Agent, the Client shall be liable for any legal costs incurred by the Agent in enforcing any of its rights under this Agreement on an attorney and client scale – and calculated at the tariff of legal costs prescribed for the High Court of South Africa as amended from time to time. The legal costs payable by the Client shall include all attorney and client consultations and correspondence, correspondence and consultations and telephone calls between the attorney and the Client, collection charges, tracing fees and all other costs and charges which the Client may be obliged to pay its attorneys. The Client shall furthermore be liable for such legal costs regardless of whether or not legal proceedings are instituted – it being the intention that the Client shall be liable to pay the Agent’s legal costs incurred in the event of a breach on the part of the Client. The Client shall furthermore be liable to bear the legal costs incurred during the course of any legal proceedings and / or in relation to enforcing any judgement or order and / or in regard to any appeal against any judgement or otherwise. The Client shall furthermore be liable to pay said legal costs at the High Court tariff regardless of whether or not the costs were incurred relative to legal proceedings sued out of the Magistrates Court alternatively by way of arbitration alternatively in circumstances where the costs were incurred even though legal proceedings were not instituted. The Client hereby specifically consents to the taxation of any bill of costs drawn in terms of this Agreement before the Taxing master of the Magistrates Court having jurisdiction over the Client in terms of Section 28 of the Magistrates Court Act as amended from time to time.

**12 DISPUTE RESOLUTION**

- 12.1 In the event of any dispute, question or difference arising at any time between the parties out of or in regard to any matter arising out of this Agreement which the parties cannot resolve amicably, then and in that event the Agent shall, in its sole and absolute discretion, be entitled to elect to refer any such dispute to Arbitration on the further terms and conditions set out hereunder.
- 12.2 The arbitration shall be held under the administration and / or in accordance with the rules of the Arbitration Association of South Africa.
- 12.3 Each of the parties hereby irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings:
  - 12.3.1 shall be final and binding on each of them, and;
  - 12.3.2 shall be carried into effect, and;
  - 12.3.3 can be made an Order of any court to whose jurisdiction the parties are subject, and;
  - 12.3.4 shall include an award as to the costs of the arbitration proceedings.
- 12.4 Clauses 12.1 to 12.3 hereof shall continue to be of application, notwithstanding the cancellation or purported cancellation of this Agreement.
- 12.5 The provisions of this Clause 12 shall not preclude any of the parties from seeking urgent interdict or mandatory relief in a court of competent jurisdiction in circumstances where such relief is appropriate and the parties hereby consent to the jurisdiction of the Magistrate’s Court that may have jurisdiction, notwithstanding that the amount of the claim may exceed the limit of the Magistrate’s Court.
- 12.6 It is the intention of the parties that a dispute referred to Arbitration under this Agreement shall, as far as is practically possible, be finally disposed of within two months from date of referral.
- 12.7 In the event of the Agent instituting legal proceedings, sued out of either the High Court or the Magistrates Court, against the Client in respect of any matter arising from or relating to this Agreement, and further in the event of the Client defending said legal proceedings then and in that event the Agent may, in its sole and absolute discretion, elect to refer the contested Court matter to Arbitration by notice to that effect to the Client (or his attorney of record) within ten days of receipt of the notice of opposition to the legal proceedings.
- 12.8 For the purposes of any legal proceedings against the Client hereunder, for provisional sentence or otherwise, a certificate by any financial manager of the Agent as to the amount owing by the Client and to the fact that the due date of payment of such amount has arrived, shall be sufficient and satisfactory proof of the facts therein stated until the contrary has been proven.



**TERMS OF BUSINESS FOR THE INTRODUCTION AND USE OF SERVICES OF TEMPORARY WORKERS**

I confirm that I have received, understood and will comply with these Terms of Business.  
I also confirm that I am **fully authorised** to sign these Terms of Business on behalf of the Client.

DATED at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_\_

Client name \_\_\_\_\_

Full name \_\_\_\_\_ Position \_\_\_\_\_

SIGNATURE \_\_\_\_\_

**AS WITNESSES**

1. \_\_\_\_\_ Full name \_\_\_\_\_

2. \_\_\_\_\_ Full name \_\_\_\_\_

Signed on behalf of The Nursing Services of South Africa

DATED at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_\_

Full name \_\_\_\_\_ Position \_\_\_\_\_

SIGNATURE \_\_\_\_\_

**AS WITNESSES**

1. \_\_\_\_\_ Full name \_\_\_\_\_

2. \_\_\_\_\_ Full name \_\_\_\_\_

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