

## 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) eighteen 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 clauses 6 and 10 below. 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 hours worked

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

The charges comprise the Temporary Worker's pay (including holiday pay entitlement) and also Winchmore Tutors commission, employer's national insurance contributions, other statutory deductions 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. The Client understands and agrees that tutors supplied by Winchmore Tutors are required to log their hours using a tracking application and that physical timesheets will not be provided. The client agrees to accept all hours processed via the tracking application, unless irrefutable evidence of an error can be supplied to Winchmore Tutors Ltd. 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 if 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 shall be calculated as follows:

Rates as agreed on a **one-to-one basis**.  
Rates as agreed on a **group basis (2+ pupils)**  
Rates as agreed for **SEN tuition**

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Winchmore Tutors will submit its invoices for charges, and any other appropriate costs, on a fortnightly basis. The invoices are payable within 7 days of their date of issue or receipt – whichever is the later. VAT will be charged where appropriate at the rate prevailing at the time of work.

If the Client fails to pay the invoice within 7 days, Winchmore Tutors reserves the right to claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (interest) Act 1998 (LPCDA), and it is agreed that the term implied by the Act shall apply after any judgements as well as before. Any reference to the LPCDA is also a reference to any amendment, modification or re-enactment of it. If for any reason the LPCDA does not apply, interest shall be payable on overdue amounts at 8% over the Bank of England Base Rate from time to time. Further costs will also be claimed for relevant administration and legal cost incurred in the recovery of the debt.

Without prejudice to our right to claim costs under the LPCDA, if for any reason any payment is not made when due, we reserve the right to be paid on an indemnity basis any costs we incur in recovering any money due under this contract (and the costs of recovering such costs) including our administrative costs and any costs incurred with lawyers or debt collection agencies. Our administrative costs may include the cost of employing the staff concerned and the overheads attributable to them for time spent. In calculating our administrative costs, credit will be given for any compensation due under the LPCDA. If proceedings are issued, a minimum contribution of £250 (in addition to the fixed costs of issue) will be claimed towards any costs incurred with lawyers.

### 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) Without prejudice to the provisions of clause 8 below, all Temporary Workers supplied by Winchmore Tutors Ltd will have 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 policies (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 as 20% of the annual equivalent salary, including all benefits, of the relevant individual. Similarly, the Client will be liable to pay the full Transfer 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.

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### 7. Suitability and references

- (a) Winchmore Tutors will : use all reasonable endeavours to check the identity of the Applicant, confirm that the Applicant has the necessary skills, qualifications and experience specified by the Client; obtain and provide (if requested) copies of relevant qualifications and appropriate references (if referees have consented) ; ascertain the Applicant's willingness to work in the role specified; ensure that the Applicant has the appropriate level of Disclosure from the Disclosure and Barring Service and/or a clearance obtained from an overseas police force and clearance accordance with the DfE guidelines, DBS code of practice and Part V of the Police Act 1997. Winchmore Tutors 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.
- (b) The Client shall satisfy themselves as to the suitability of the Applicant, before engaging the Applicant.
- (c) 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 Disclosure and Barring Service (DBS) for their purposes.
- (d) Introductions are confidential.

### 8. 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 for administrative purposes, from the time the Temporary Worker reports to take up duties and throughout the Assignment. The tutor, however, will retain control over the content and delivery of the lessons and appropriate tutoring plans. The Client undertakes to assist the Temporary Worker and to provide the tutor with the same facilities as if they 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 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.

### 9. Cancelling the temporary worker booking

- (a) The Client undertakes to ensure their 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

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- 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, for whatever reason, **giving 24 hours' notice** prior to the tuition taking place. Failure to do so will incur the full charge for the relevant sessions.
  - (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.

### 10. Lesson Summaries

Lesson summaries can be accessed through the Winchmore Tutors website and are supplied in our standard format. If the client requires the lesson summaries to be provided in an additional format the client will be required to contact their Account Manager and any such requests may be subject to additional fees.

### 11. Appointment of Winchmore Tutors employees

The Client will not employ or seek to employ any employees of Winchmore Tutors either during, or within 6 months of termination of their employment, with Winchmore Tutors. 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 The Transfer fee as calculated with reference to clause 6 above.

### 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

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 the consent of Winchmore Tutors Ltd.

### 15. Version

This version of the Terms of Business supersedes all previous versions.

### 16. Governing Law

Applicable Law - The Contract as well as its performance will be governed by and interpreted in accordance with the laws of England.

Should a client have issues with any of the terms contained above, these need to be raised with Winchmore Tutors within 14 business days of receipt thereof.

Thereafter these terms will be considered to be tacitly accepted as at the start of the engagement, and hence fully binding on both parties.

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.....  
Client

.....  
Date

.....  
Signed on Behalf of the Client

.....  
Name and Position