

## **CERCO IT TRAINING & RECRUITMENT**

### **Terms of business relating to supply of temporary staff**

#### **Interpretation**

- 1.1 In these terms of business ('the Terms') the following expressions shall be given the following meanings:
  - 1.1.1 '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.
  - 1.1.2 '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.
  - 1.1.3 'The Company' means CERCO IT TRAINING & RECRUITMENT LTD or any of its subsidiary, associated or holding companies.
  - 1.1.4 'Month' means calendar month.
  - 1.1.5 'Temporary' means any person who is introduced or supplied by the Company to the Client with a view to carrying out work for the Client.
  - 1.1.6 'Week' means 7 consecutive days.
- 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 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 or supply a Temporary to the Client acting either as:
  - 1.6.1 agent, in which case all the terms of this Agreement save clauses 5.2 and 6 will apply; and
  - 1.6.2 contractor, in which case:
    - 1.6.2.1 all the terms of this Agreement save clause 5.1 will apply; and
    - 1.6.2.2 the Temporary may in some cases be employed under a contract of service with the Company and in others be self-employed.

The capacity of the Company and (if appropriate) the Temporary for 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. The Client accepts that no warranty as to the suitability of the Temporary can be given by the Company.
- 2.2 Where the Client has required the Company to introduce or supply a Temporary for purposes which include the operation of motor vehicles, the Company shall take all responsible steps to enquire whether the Temporary is the holder of a current licence to drive a vehicle of the class or description duly notified to the Company by the Client as aforesaid.
- 2.3 Subject to clause 4.1 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.
- 2.4 In cases where the Company is acting as principal it will:
  - 2.4.1 make deductions and account to the Inland Revenue for income tax under Schedule E in respect of the remuneration of each Temporary; and

- 2.4.2 make deductions and account for all necessary National Insurance contributions relevant to the remuneration of each temporary;

### **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 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.
- 3.3 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, including the operation of any machinery or vehicles. The Client shall be responsible for obtaining any work and other permits and for ensuring that the Temporary satisfies any medical requirements or other qualifications that may be appropriate or required by law.
- 3.4 The Client hereby undertakes to comply with all obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the forgoing those relating to the place, nature or system of work) in any way arising from directly or indirectly connected with the services rendered by a Temporary.
- 3.5 The Client undertakes to exercise all supervision, direction and control over the manner, time and place in which each Temporary carries out their work for the Client throughout the duration of the Assignment (notwithstanding that where the Company is acting as contactor, the Temporary is not in fact the Client's employee).
- 3.6 The Client undertakes that in the event of the Client engaging (whether for a definite or indefinite period) any Temporary or effectively introducing (directly or indirectly) any Temporary introduced or supplied to the Client by the Company to another person, firm or corporation, including and subsidiary, associated or holding company of the Client, resulting in full or part-time employment ('engagement') by the Client or by that person, firm or corporation (which the Client shall immediately notify to the Company) the Client shall pay to the Company an introduction fee if the Engagement occurs within 6 months of the date on which services were last provided to the Client by the Temporary. The introduction fee shall be calculated in accordance with the Company's fees for permanent introductions in force from time to time on which VAT shall be paid in addition at the prevailing rate.

#### **4 Time Sheets**

- 4.1 The Temporary shall be paid under the terms of clause 5 as appropriate by the company immediately upon receipt of a time sheet by the Client which shall be deemed conclusive evidence:
- 4.1.1 that the Client is satisfied with the work carried out by the Temporary;
  - 4.1.2 that the Client agrees to and accepts these Terms; and
  - 4.1.3 that the Client will pay the charges in accordance with clause 5 hereunder in full and without dispute or deduction.
- 4.2 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.

#### **5 Fees**

- 5.1 the Client shall pay to the Company for the introduction of the Temporary:
- 5.2
- 5.2.1 on behalf of the Temporary, the fees, payments reimbursements of disbursements to which he is entitled for carrying out work for the Client together with the amount for any National Insurance contributions required to be paid by the Company;
  - 5.2.2 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 prevailing rate where and to the extent applicable.
- 5.3 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 any 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. VAT shall be paid in addition at the prevailing rate where and to the extent applicable.
- 5.4 All moneys due hereunder shall be paid by the Client within 28 days of the date of invoice by the Company. Any breach of this clause 5.3 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 of payment set out in clause 5.3 (both before and after judgement) from the date of

invoice up to and including the day of payment at the rate of 3% per annum above the base rate from time to time of Barclays 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 Clients complying with its obligations set out in clauses 3.1 to 3.6) (an 'Unsuitable Temporary'), then the Client shall notify the Company in writing of that fact giving the full grounds for its dissatisfaction with the Unsuitable Temporary (a 'Dissatisfaction Notice').
- 6.2 Within 5 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.
- 6.2 The Client shall give the Company such co-operation 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 disciplinary proceedings in relation to any Unsuitable Temporary's performance or conduct.

## **7 Liability and indemnity**

- 7.1 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 in accordance with clause 6) 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:
- 7.1.1 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 (subject to clause 6);

- 7.1.2 any act or omission of a Temporary, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;
- 7.1.3 any loss, injury, damage, expense or delay incurred or suffered by a Temporary;
- 7.1.4 any claim by or on behalf of any individual that there existed during the term of this Agreement a contract of employment between the Client and such Temporary; or
- 7.1.5 any income tax, National Insurance contributions, interest and/ or penalties thereon arising in respect of the Temporary for which the Client may be called upon to account to the Inland Revenue and the disallowance of any VAT charged in respect of the services as allowable input tax for the Client;

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.

- 7.2 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:
  - 7.2.1 any loss, injury, expense or delay suffered or incurred by a Temporary, howsoever caused;
  - 7.2.2 any loss, injury, 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
  - 7.2.3 any loss, injury or delay suffered or incurred by the Company as a result of any act or omission of the Client;

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.

- 7.3 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.

## **8 Miscellaneous**

- 8.1 The Company reserves the right to revise these Terms without prior notice.
- 8.2 These Terms shall be governed by and constructed in accordance with the laws of England and Wales.