

Terms of Business for the Supply of Nursing/Care Staff

1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

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| "Assignment" | means the period during which the Nurse/Care Assistant is engaged to render services to the Client; |
| "Client" | means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 requiring the services of the Nurse/Care Assistant. |
| "Engages/Engagement/Engagement" | means any engagement, employment or use of the Nurse/Care Assistant directly by the Client or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement or any other engagement; directly or through a limited company of which the Nurse/Care Assistant is an officer or employee |
| "Introduction" | means (i) the Client's interview of a Nurse/Care Assistant in person or by telephone, following the Client's instruction to the Employment Business to supply or search for a Nurse/Care Assistant; or (ii) the passing to the Client of a curriculum vitae or other information which identifies the Nurse/Care Assistant and which leads to an Engagement of the Nurse/Care Assistant |
| "Introduction Fee" | means the fee payable in accordance with clause 7.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. |
| "Nurse" | means the nurse, midwife or health visitor, currently registered with the Nursing and Midwifery Council ('NMC'), introduced by the Employment Business to render services to the Client. |
| "Care Assistant" | means the Care Assistant, introduced by the Employment Business to render services to the Client. |
| "Employment Business" | means Prestige Nursing Ltd of Greenview House, 5 Manor Road, Wallington, Surrey SM6 0BW (hereafter referred to as Prestige) |
| "Remuneration" | includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Nurse for services rendered to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £4,000 will be added to the salary in order to calculate the Nursing Business' fee. |
| "Transfer Fee" | means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. |

- 1.2 Unless the context otherwise requires, references to the singular include the plural.
 1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.
 1.4 Member will be used to refer to a Nurse/or Care Assistant unless specifically stated.

2. THE CONTRACT

- 2.1 These terms and conditions form the contract between the Client and the Prestige for the provision of a Member's services to the Client and apply to all Assignments. A guide providing full details about the Prestige's services is available upon request. Prestige will also provide details of the qualifications and experience of the Member to be supplied to the Client.
 2.2 These Terms of Business are deemed to be accepted by the Client by virtue of its request for interview with or a Member introduced by Prestige, or the passing of any information about the Member to any third party following an Introduction.
 2.3 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Nursing Business, these Terms prevail over any other terms of business put forward by the Client.
 2.4 No variation or alteration of these Terms and Conditions shall be valid unless the details of such variation are agreed by a Director of Prestige and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

3. TIMESHEETS

- 3.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less, the Client shall sign the Prestige timesheet, verifying the number of hours worked by the Member during that period.
 3.2 Signature of the timesheet by the Client is confirmation of the number of hours worked by the Member. If the Client is unable to sign a time sheet produced for authentication by the Member because the Client disputes the hours claimed, the Client shall inform Prestige as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with Prestige to enable Prestige to establish what hours, if any, were worked by the Member. Failure to sign the time sheet does not alter the Client's liability to pay for hours worked.
 3.3 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Member. In cases of unsuitable work the Client should apply the provisions of clause 10.2 below.

3.4 These Terms & Conditions are deemed to be accepted by virtue of a signed timesheet

4. HOURLY CHARGES

- 4.1 The Client agrees to pay such hourly charges of Prestige as shall be notified to and agreed with the Client. The hourly charges are calculated according to the number of hours worked by the Member (to the nearest quarter hour) and comprise mainly the Member's pay and any sums due in respect of holiday pay or any other statutory entitlement of the Member but also include Prestige's commission calculated as a percentage of the Member's pay, employer's National Insurance contributions and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable.
 4.2 The Client shall pay Prestige's charges current at the commencement of the Assignment although these may be varied with immediate effect from time to time during the Assignment upon notification to the Client. The charges are invoiced to the Client on a weekly basis and are payable within 28 days. Travelling, hotel and other expenses as may be agreed, shall be added to or deducted from the invoice as appropriate.
 4.3 If payment in full is not made within 28 days of the date of an account, Prestige shall be entitled to charge interest on the outstanding amount at the rate of 3% of the balance due for each month outstanding.
 4.4 There are no rebates payable in respect of Prestige's charges.
 4.5 Any queries regarding Prestige's charges as per invoice, must be notified to Prestige within 7 days of receipt of the invoice. If no queries are raised in this period, the Client is deemed to be fully satisfied with Prestige's charges and is liable to pay the invoice in full within 28 days. Queries raised against invoices will not preclude Prestige from seeking to recover the full invoice value from the Client, subject to any changes caused by the query.

5. REMUNERATION, DEDUCTIONS AND STATUS

- 5.1 Prestige is responsible for payment of all remuneration due to the Member and for the deduction and payment of National Insurance contributions and PAYE Income Tax applicable to the Member pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.
 5.2 The member is neither the Client's employee nor that of Prestige but is engaged by Prestige as a self-employed person under a contract for services to provide services to the Client.

6. INFORMATION TO BE PROVIDED

- 6.1 When making an Introduction of a Member to the Client, Prestige shall inform the Client of the identity of the Member; that the Member has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Member will be employed by Prestige under a contract of service or apprenticeship or a contract for services; and that the Member is willing to work in the Assignment.
 6.2 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following, save where the Member is being Introduced for an Assignment in the same position as one in which the Member had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

7. TRANSFER AND INTRODUCTION FEES

- 7.1 In the event of the Engagement by the Client of a Member supplied by Prestige either (1) directly or (2) pursuant to being supplied by another nursing business, within either
- The duration of the Assignment;
 - 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
 - 8 weeks from the day after the last day the Member worked on the Assignment

the Client shall be liable, to either an extended period of hire as set out in 7.3 below or a Transfer Fee calculated in accordance with 7.2 below. The Client must give Prestige 5 days written notice in advance of the Engagement of whether it has elected to take the period of extended hire or to pay the Transfer Fee. However, where the client does not give such notice before the member is engaged the parties agree that the Transfer Fee shall be due.

- 7.2 The Transfer Fee shall be calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 4.1 multiplied by 250. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
 7.3 The period of extended hire of the Nurse shall be 12 weeks during which the Client shall pay the current hourly charge agreed pursuant to clause 4.1 for each hour the Member is so employed or supplied.
 7.4 If the Client elects for a period of extended hire, as set out above, but before the end of such period Engages the member supplied by Prestige either directly or pursuant to being supplied by another nursing business or the Member chooses not to be supplied for period of extended hire or for whatever reason is unable to work for the whole period of extended hire, the Transfer Fee calculated in accordance with 7.2 may be charged, reduced by such percentage to reflect the period of extended hire already undertaken by

- the Member and paid for by the Client.
- 7.5 In the event that there is an Introduction of a Member to the Client which does not result in the supply of that Member by Prestige to the Client, but which leads to an Engagement of the Member by the Client either directly or pursuant to being supplied by another nursing business within 6 months from the date of Introduction the Client shall be liable, to either a period of hire as set out in 7.3 or an Introduction Fee calculated in accordance with 7.2. The Client must give Prestige 5 days written notice in advance of the Engagement of whether it has elected to take the period of hire or to pay the Introduction Fee. However, where the client does not give such notice before the Member is Engaged the parties agree that the Introduction Fee shall be due. 7.4 will apply where the extended period of hire is not fulfilled.
- 7.6 In the event that the Engagement of the Member is for a fixed term of less than 12 months, the fee in clause 7.2, calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Member within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.
- 7.7 In the event that a Member supplied to a Client is introduced by the Client to a third party which results in the Engagement of the Member by the third party within either
- The duration of the Assignment;
 - 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
 - 8 weeks from the day after the last day the Member worked on the Assignment

the Client shall be liable to pay a Transfer Fee calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 4.1 multiplied by 250. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

- 7.8 In the event that there is an Introduction of a member to the Client which does not result in the supply of that Member by Prestige to the Client, but the Member is introduced by the Client to a third party which results in the Engagement of the Member by the third party within 6 months from the date of Introduction the Client shall be liable, to an Introduction Fee as shown in 7.4.

8. LIABILITY

- 8.1 Whilst every effort is made by Prestige to ensure reasonable standards of skills, integrity and reliability from the Members carrying out the Assignments, no liability will be accepted by Prestige for any loss, expense or damage arising from any failure to provide a Member for all or part of an Assignment or from the negligence, dishonesty or misconduct of the Member. For the avoidance of doubt, Prestige does not exclude liability for death or personal injury arising from its own negligence.
- 8.2 Members provide their services under contracts for services entered into with Prestige. Except where they are engaged to render services on behalf of private patients, Members are deemed to be under the supervision, direction and control of the Client during the Assignment and the Client shall be responsible for all acts, errors and omissions of the Member. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations 1998, by-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 Employer's and Public Liability Insurance cover for the Member during all Assignments.
- 8.3 The Client shall also advise Prestige of any special health and safety matters about which Prestige is required to inform the Member and about any requirements imposed by law or by any professional body, which must be satisfied if the Member is to fill the Assignment and will assist Prestige in complying with its own obligations under the Working Time Regulations 1998 by supplying any relevant information about the Assignment requested by Prestige and the Client will not do anything to cause Prestige to be in breach of its obligations under the Working Time Regulations. Where the Client requires or may require the services of a Member for more than 48 hours in any week, the Client must notify Prestige of this requirement before the commencement of that week.
- 8.4 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Member for the Member to fill the Assignment.
- 8.5 In all cases the Client shall indemnify and keep indemnified Prestige against any costs, claims, damages and expenses incurred by Prestige arising out of any Assignment or any non-compliance with clauses 8.2 and 8.3 and/or as a result of any breach of these Terms by the Client.

9. POLICIES AND PROCEDURES

- 9.1 Where the Client is the patient for whom the Assignment is being performed, the Member is precluded from assisting the Client in relation to making a will or from benefitting under the terms of any will or codicil made by the Client.
- 9.2 The Client will co-operate with Prestige 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 Prestige.
- 9.3 The Member will be subject to Prestige's policies regarding administering and/or assisting with medication. The policy will also define the limits of the Member's assistance and the tasks which may not be undertaken without specialist training. The Client shall not request the Member to act in any way which is a breach of the said policies.
- 9.4 Where the Member is supplied to a Client's own home, any third party owned equipment in the home shall not be used by the Member unless the equipment is in a safe condition and the necessary checks have been undertaken by the provider of the equipment.
- 9.5 The Member will seek the Client's informed consent in relation to all aspects of care.

10. STATEMENT OF PURPOSE & COMPLAINTS PROCEDURE

- 10.1 Prestige's statement of purpose (prepared in accordance with the Nurses Agencies Regulations 2002 and the Care Standards Act 2000) is available on request from Prestige.
- 10.2 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 Prestige and such complaint shall be dealt with in accordance with Prestige's complaints procedure. A copy of Prestige's complaints procedure will be supplied to the Client and to anyone who requests a copy of the procedure on behalf of the Client.

11. TERMINATION

- 11.1 If the Client reasonably considers that the services of the Member are unsatisfactory, the Client may terminate the Assignment either by instructing the Member to leave the Assignment immediately or by directing Prestige to terminate the Assignment immediately. Prestige may in such circumstances reduce or cancel the charges for the time worked by that Member, provided that the Assignment terminates:
- 11.1.1. within four hours of the Nurse commencing the Assignment where the booking is for more than seven hours; or
- 11.1.2. within two hours for bookings of seven hours or less.
- and also provided that notification of the unsuitability of the Member is confirmed in writing to Prestige within 48 hours of the termination of the Assignment.
- 11.2 Any of the Client, Prestige or the Member may terminate an Assignment at any time without prior notice.
- 11.3 Termination of an assignment with less than 8 hours notice will incur a cancellation fee of 4 x hourly rate as per the charges in 4.1.
- 11.4 The Client shall notify Prestige immediately and without delay and in any event within 24 hours if the Member fails to attend work or notifies the Client that she is unable to attend work for any reason.

12. SPECIAL SITUATIONS

- 12.1 Where the Member is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, Prestige will take all reasonably practicable steps to obtain and offer to provide to the Client:
- Copies of any relevant qualifications or authorisations of the Member, and
 - Two references from persons not related to the Member who have agreed that the references they provide may be disclosed to the Client.
- and has taken all reasonably practicable steps to confirm that the Member is suitable for the Assignment. If Prestige is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

13. FORCE MAJEURE

- 13.1 Prestige will use its best endeavours to provide the services of a Member throughout the Assignment. Should Prestige's obligation to do so be materially interrupted or interfered with by an event of force majeure, then such obligation shall be suspended while the interference or interruption continues and Prestige will not be liable for any loss the Client suffers or costs s/he incurs as a consequence of the interference or interruption.
- 13.2 Both parties to this contract agree to use their best endeavours to minimize and reduce any period of suspension caused by an event of force majeure.
- 13.3 The expression "an event of force majeure" includes but is not limited to fire, flood, casualty, lockout, strike, labour disputes, 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 the act of any other legally constituted authority, any cause or event arising out of or attributable to war, or any other cause or event (whether of a similar or dissimilar nature) outside the reasonable control of either party to this contract other than a shortage or lack of money.

14. LAW

- 14.1 These Terms are governed by the law of England, Wales and Scotland and are subject to the exclusive jurisdiction of the Courts of England, Wales and Scotland.

Signed by Prestige Nursing

Date

Signed by or on behalf of the Client/Establishment

Date

Trading Name

EFFECTIVE DATE JULY 6TH 2004

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