

Terms of Business for the Supply of Domiciliary Care Workers to Private Householders

1. DEFINITIONS

- 1.1 In these Terms of Business the following definitions apply:
- 'Employment Business' means Prestige Nursing Limited (hereafter referred to as Prestige);
- 'Assignment' means the period during which the Care Assistant is engaged to render services to the Client.
- 'Carer Assistant' means the person introduced or supplied by the Employment Business to the Client for the Assignment from time to time;
- 'Client' means the person requiring the services of the Care Assistant or the person or body, legally entitled to contract on behalf of the Client;
- 'Engages/Engaged/' means any engagement, employment or use of the Care Assistant
- Engagement by the Client or any third party or through any other employment business whether under a contract of service or services, or under an agency, license, franchise or partnership agreement or any other engagement; directly or through a limited company of which the Care Assistant is an officer or employee.
- 'Introduction' means (i) the Client's interview with the Care Assistant in person or by telephone following the Client's instruction to Prestige to search for a Carer Assistant, or (ii) the passing to the Client of information which enables the Client to identify the Care Assistant and which leads to the Engagement of the 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.
- '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 Care Assistant 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 Prestige's 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 and female to male.
- 1.3 Care Assistants are referred to as Members.
- 1.4 The headings contained in these Terms are for convenience only and do not affect their interpretation.

2. THE CONTRACT

- 2.1 These terms and conditions form the contract between the Client and Prestige for the provision of a Member's services to the Client and apply to all Assignments. Prestige also supplies a user's guide which contains additional information about the services to be provided and should be read along with these terms and conditions.
- 2.2 Prestige agrees to provide the services of a Member during the period of an Assignment. Prestige does not employ Members and it cannot guarantee that a particular Member will be able to remain with the Client throughout the entire Assignment but will use all reasonable efforts to ensure continuity of care. Where possible, the Client will be consulted in advance relation to any change in the Member provided.
- 2.3 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 the Assignment (or, if the Assignment is for less than one week or is completed in the middle of a week, on the day that the Assignment ends) the Member will give the Client a timesheet. The Client should check that the timesheet shows the correct number of hours worked for the period concerned. If it is correct the Client must sign it and return it to the Member so that it can be promptly forwarded to Prestige. This is important because the Member must submit a signed timesheet to Prestige in order to be paid. If the timesheet does not show the correct number of hours the Client will need to ask the Member to amend the timesheet accordingly. If the Client is unable to sign a timesheet 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.
- 3.2 The Client's signature on the timesheet will mean that s/he is satisfied with the Member's services and that the Member provided those services for the hours shown on the timesheet. However if the Client fails to sign the timesheet for any reason Prestige still reserves the right to charge the Client for all hours worked satisfactorily.
- 3.3 These Terms & Conditions are deemed to be accepted by virtue of a signed timesheet.

4. HOURLY CHARGES

- 4.1 The Client agrees to pay Prestige for the provision of the Member's services 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, the 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. VAT is charged as appropriate.

- 4.2 Subject to clause 2.3 above Prestige reserves the right to vary the rate from time to time during the Assignment.
- 4.4 The charges are invoiced to the Client on a weekly basis and are payable within 28 days. Travelling and other expenses as may be agreed shall be added to or deducted from the invoice as appropriate.
- 4.5 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.
- 4.6 Subject to Clause 8 of these terms there are no rebates payable in respect of the charges of the Employment Business.
- 4.7 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 The Employment Business is responsible for payment of all remuneration due to the Member and for the deduction and payment of National Insurance contributions and PAYE as required by law.
- 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 a 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. INTRODUCTION FEE

- 7.1 Prestige's Introduction to the Client of the Member is strictly confidential. Members registered with Prestige remain on Prestige's books during the Assignment so that Prestige is able to place them with other Clients after the Assignment has ended. If the Client decides to engage a Member directly Prestige loses the opportunity of supplying that Member's services to other clients. It is therefore a custom and practice amongst care agencies to charge a fee on an extended period of hire in these circumstances as per the following paragraphs. 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.
- 7.1.1 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 7.1.3 below or a Transfer Fee calculated in accordance with 7.1.2 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.
- 7.1.2 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.
- 7.1.3 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.
- 7.1.4 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.

- 7.2 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 7.1.3 or an Introduction Fee calculated in accordance with 7.1.2. 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. 7.1.4 will apply where the extended period of hire is not fulfilled
- 7.3 In the event that the Engagement of the Member is for a fixed term of less than 12 months, the fee in clause 7.1.2, 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.
- 7.4 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.
- 7.5 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 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

Prestige strongly advises that, before the Assignment begins, the Client ensures that s/he holds household insurance, which includes public liability cover. The reason for this is that the Client will be liable for injury and/or loss to the Member and/or Prestige arising under the Occupiers Liability Act 1957 (as amended).

9. CANCELLATION AND TERMINATION

9.1 Prestige is responsible for ensuring that the Member supplied to the Client has the necessary skills and knowledge for the Assignment having regard to all the requirements of the Client discussed before the Assignment commenced. Throughout the Assignment Prestige will monitor the Member's services to ensure that the agreed care programme is being carried out by the Member. However if the Client finds the Member unsatisfactory, the Client may terminate the Assignment of the Member and Prestige:

- 9.1.1 will reduce or cancel the charges for that day's work performed where Prestige is at fault for providing an unsuitable Member; and
- 9.1.2 may, at its discretion, reduce or cancel the charges for that day's work performed where the unsatisfactory circumstances are beyond the reasonable control of Prestige.

provided that in both cases the Client notifies Prestige within 4 hours of the start of an Assignment or the unsatisfactory circumstances arising whichever is later. Prestige will use its best endeavours to provide the Client with a suitable replacement within 4 hours of receiving notification of his/her rejection of the Member.

9.2 Subject to clause 9.1 above if the Client wishes to terminate the Assignment for any reason s/he must give Prestige 1 week's notice in writing failing which s/he will be subject to a cancellation fee equal to one times the average weekly charge rate of Prestige for the Member's services.

9.3 Prestige may terminate the Assignment by giving the Client 1 weeks notice in writing.

9.4 If you disagree with any of the outcomes and/or decisions made at your initial assessment or which is documented on your care plan, you are required to put this in writing to the Branch Manager within 7 days of your initial assessment. You have the right to appeal against any decision made. The appeal will take place as soon as is practically possible of the Branch Manager receiving your complaint. The appeal can take place within the service users own home or at the branch. The member of Prestige Nursing staff who will be involved in the appeal will either be the Branch Manager or Regional Manager. This individual will not have been part of the initial assessment process. The service user has the right to be accompanied by a friend or relative or other professional or advocate. You will be notified in writing the outcome of the appeal.

10. POLICIES AND PROCEDURES

10.1 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 witnessing or benefiting under the terms of any will or codicil or made by the Client or from becoming involved in any other legal documentation.

10.2 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.

10.3 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 Member is also subject to Prestige's policy regarding the safe handling of the Client's money and property. The Client shall not request the Member to act in any way which is a breach of the said policies.

10.4. The Member will seek the Client's informed consent in relation to all aspects of care.

10.5. Prestige and the Member will protect the confidentiality of information about the Client which is obtained during the course of the Assignment and the Client's details, except where such information needs to be relayed to other health care agencies or professionals.

The Client hereby consents to information about the Client (and the patient, if different) being processed and stored by Prestige in accordance with the Data Protection Act 1998.

which is obtained during the course of the Assignment and the Client's details, except where such information needs to be relayed to other health care agencies or professionals. The Client hereby consents to information about the Client (and the patient, if different) being processed and stored by Prestige in accordance with the Data Protection Act 1998.

11. STATEMENT OF PURPOSE, COMPLAINTS & COMPLIMENTS PROCEDURE

11.1 Prestige's statement of purpose (prepared in accordance with the Domiciliary Care Agencies Regulations 2002) is available on request from Prestige.

11.2. 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. Where the Client wishes to relay any compliment about any Member to Prestige such comments are welcomed and details are given in the Complaints & Compliments procedure, a copy of which will be supplied to the Client and to anyone who requests a copy of the procedure on behalf of the Client.

12. BACKGROUND CHECKS

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 of her 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. AUTHORITY

If this contract is not signed by the person requiring the services of the Member, the signatory warrants to Prestige that s/he has the power and the authority to sign this agreement on behalf of the person requiring the services of the Member.

15. LAW

15.1 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 _____

Clients name

EFFECTIVE DATE JULY 6TH 2004

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