

# Tradestaff Terms & Conditions for Supply of Casual Staff and International Migrant Workers

**Company Name:**

**BH Client ID:**

## 1. Acceptance

**1.1** These Terms and Conditions ("Terms") constitute a contract between Tradestaff and the company, sole trader, partnership, trust or other form of client ("Client") whose details are stated above.

**1.2** The Client acknowledges that:

**1.2.1** "Tradestaff" means the companies associated with the Tradestaff brand, being Tradestaff Group Limited and Tradestaff Bay of Plenty Limited (together the "Tradestaff Entities" and each a "Tradestaff Entity")

**1.2.2** When the Client requests casual workers from Tradestaff, such casual workers will be supplied by either Tradestaff Group Limited or Tradestaff Bay of Plenty Limited. In each particular case the Tradestaff Entity which supplies the casual workers to the Client will invoice the Client.

**1.2.3** The Tradestaff Entity which invoices the Client in each case is the contracting party for the purposes of these Terms and the rights and obligations of Tradestaff specified in these Terms shall be specific and limited to the Tradestaff Entity which the Client is contracting with.

**1.3** The acceptance of this contract is deemed complete by the signature for and on behalf of the Client at the end of this contract. Tradestaff reserves the right to make changes to these Terms without notice. Any amended Terms will be placed on Tradestaff's website ([www.tradestaff.co.nz](http://www.tradestaff.co.nz)). Such amended Terms shall apply with effect from the date that they are placed on the website or such later date specified in any correspondence to the Client.

**1.4** Further acceptance and confirmation of these Terms shall occur whenever any representative of the Client requests a Tradestaff temporary worker.

**1.5** These Terms are supplementary to Tradestaff's account application form that Tradestaff has in place with the Client. They do not release the Client from any other obligations to Tradestaff.

**1.6** Tradestaff will use reasonable endeavours to source and locate temporary and casual workers to meet the needs of the Client, however Tradestaff shall not be liable for any direct or indirect loss or damage of any nature whatsoever to the Client as a result of the failure of Tradestaff to supply any such workers.

## 2. General

**2.1** The Client shall provide all casual workers supplied by Tradestaff with, and ensure that they read and understand, all policies that the Client has in place that relate to their work (for example relating to sexual and racial harassment and health and safety) before the worker begins work on the Client's work site.

**2.2** If the Client feels that the worker has acted in a manner which may amount to a breach of such policies, unsatisfactory work performance, serious misconduct or less serious misconduct requiring disciplinary action, the Client must contact Tradestaff immediately and make it fully aware of all the details that relate to the situation. The Client shall then comply with the directions of Tradestaff in relation to the handling of the casual worker.

**2.2.1** The Client accepts that they may not, and only Tradestaff can, take disciplinary action in relation to casual workers supplied by Tradestaff.

**2.2.2** The client accepts that under the provisions of the Employment Relations (Triangular Employment) Amendment Act 2018 they are defined as a Controlling Third Party and that the provisions of the Amendment extend to them in so far as they are applicable.

### **3. Casual Staff Payment**

**3.1** Tradestaff's casual workers are to be paid by Tradestaff only. Tradestaff is therefore responsible for the wages, annual leave, public holiday pay, KiwiSaver, accident insurance and taxation of its casual workers.

**3.2** The Client shall provide all casual workers with rest and meal breaks that provide a reasonable opportunity, during their work period, for rest, refreshment and attention to personal matters and that are appropriate for the duration of their work period assignment. Such breaks shall comply at least with the minimum requirements of sections 69ZD and 69ZE of the Employment Relations Act 2000.

**3.3** Rest breaks will form part of the time charged by Tradestaff to the Client at the agreed charge out rate for the casual worker plus GST.

**3.4** The Client shall authorise the casual worker's timesheet within the time period required by Tradestaff via Tradestaff's online timesheet management system or the Client shall manually sign and submit a paper timesheet as provided. This shall confirm the hours the casual worker has worked for the Client, rest and meal breaks taken for any given week and an acceptance to pay for such hours in full and without deduction.

**3.5** In the event that the Client requires the casual worker to work on a statutory holiday, the Client shall pay Tradestaff for the hours worked by the casual worker on that day at the pre-agreed hourly rate at a minimum rate of time and a half.

**3.6** Whenever the Client wishes for a casual worker to work hours over and above specified or usual hours of work, the client must give reasonable notice both to Tradestaff and to the casual worker. Tradestaff will confirm acceptance of this with the casual worker.

**3.7** The Client shall be invoiced weekly for the services of the casual worker by Tradestaff at an agreed hourly rate plus GST.

**3.8** There is a minimum charge for each casual worker assignment of 4 hours per day. Whenever the casual worker works less than such 4-hour minimum, this minimum charge will apply (although it may in some limited circumstances be waived at Tradestaff's sole discretion). Any such waiver shall only be effective and binding if confirmed by Tradestaff in writing.

**3.9** The Client shall pay all Tradestaff's invoices **within 7 days of the date of the invoice**, unless the Client regularly pays by Direct Debit when payment shall be made within 12 days of date of invoice.

**3.10** The Client shall pay all of Tradestaff's invoices without deduction and the Client shall have no right to set-off, counterclaim or cross demand (including that referred to in Section 290(4) of the Companies Act 1993) for any claim, debt or obligation whatsoever against Tradestaff.

**3.11** Tradestaff has the right to charge interest (at a rate of 10% per annum) on any invoice not paid within the agreed payment period specified in the preceding clause herein and shall also be able to immediately withdraw any casual worker from any assignment with the Client without limiting all or any of Tradestaff's rights pertaining to this contract.

**3.12** All debt collection costs (including those on a full solicitor/client basis) incurred by Tradestaff for the collection of any of the Client's unpaid invoices shall be paid in full and without deduction by the Client.

#### **4. Health & Safety and Return to Work**

**4.1** Tradestaff and the Client (each as a PCBU under the Health and Safety at Work Act 2015 ("HSWA")) acknowledge they each have responsibilities for the safety and health of casual workers supplied by Tradestaff, including the duty to eliminate or minimise risks to health and safety (as the case may be) so far as is reasonably practicable, and they shall consult, co-operate, and co-ordinate with each other in respect of that duty.

**4.2** The Client also acknowledges that:

**4.2.1** The casual workers supplied by Tradestaff are influenced, and/or directed by the Client while they are carrying out work at the Client's work place.

**4.2.2** The Client is responsible for and manages and/or controls the place of work of the workers, and that Tradestaff does not.

**4.2.3** They shall comply with its duties under the HSWA and any regulations made under it, including the duty to consult, co-operate and co-ordinate activities with Tradestaff.

**4.2.4** They shall have a detailed Health & Safety policy and plan in place and will supply all casual workers with a safe workplace at all times.

**4.2.5** They shall have effective risk assessment and control processes in place at all times and will make those available to Tradestaff immediately upon request.

**4.2.6** They shall advise Tradestaff of any required health and safety training/induction and shall ensure that a site specific induction is completed with all casual workers prior to such workers commencing work on any work site for the first time and as is otherwise required.

**4.2.7** They will ensure casual workers do not do any work, nor use any machinery, outside the agreed job order and job description as per the Confirmation of Temporary Assignment (COTA) provided to them, unless by prior written approval otherwise by Tradestaff and following the supply of a revised COTA.

**4.2.8** They will ensure casual workers have the opportunity to participate in and contribute to health and safety on the site they are working on, including involvement in health and safety induction/training, site safety and toolbox meetings, and risk/hazard management.

**4.2.9** They will provide casual workers with all appropriate supervision to ensure the safe completion of each assignment.

**4.2.10** If the Client is supplying a casual worker with any tools or equipment, they must be appropriate for the task and the safe completion of each assignment.

**4.2.11** They shall ensure that all tools/machinery on their site have appropriate guarding, are tagged and tested as per AS/NZS 3760: 2010, and that any safety features are not missing or impaired in any way.

**4.2.12** They will ensure all incidents/near hits involving casual workers are reported to Tradestaff immediately, and they will fully co-operate with any subsequent investigation Tradestaff undertakes and where practicable will assist in the return to work of the casual worker.

#### **5. Insurance and Liability**

**5.1** Tradestaff pays levies for all casual workers for accident compensation with ACC.

**5.2** The casual worker is not covered for any other loss or damage under Tradestaff's insurance policy.

**5.3** Under no circumstances will Tradestaff be liable for any direct or indirect loss or damage of any nature whatsoever to the Client, howsoever caused by a casual worker while they are on assignment for the Client.

**5.4** It is therefore the Client's full and unlimited responsibility to update and amend their own insurance policies to cover any circumstances, loss or damage that may arise while a casual worker is on assignment to it.

**5.5** It is the Client's full and unlimited responsibility during a work assignment of a Tradestaff casual worker to ensure that suitable supervision, control and conditions are always maintained so as to limit loss or damage to it.

**5.6** Tradestaff shall not be liable for any debts to the Client caused or incurred by the casual worker.

**5.7** Except in the case of fraud or dishonesty, the Client shall indemnify Tradestaff and hold it harmless against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings incurred by Tradestaff in relation to the supply of a casual worker to the Client, and in respect of any claim by a third party arising from any breach by the Client of its obligations under these Terms, and in relation to the casual worker assignment more generally. This clause is intended to be for the benefit of, and enforceable by, those persons prescribed in this clause for the purpose of the Contract and Commercial Law Act 2017.

**5.8** Unless otherwise agreed with the Client, Tradestaff may communicate with the Client by electronic means. Such communications may be subject to interference, interception, inadvertent misdirection or may contain viruses or other defects. Tradestaff does not accept responsibility, and will not be liable for, any damage or loss caused to the Client in connection with such corruption of electronic communication.

**5.9** The Client acknowledges that they may, in the course of the supply of the casual worker, acquire proprietary or confidential information of Tradestaff and they shall hold such information in the strictest confidence and not divulge or use it in any way.

## **6. Transfer of Casual Staff**

**6.1** The provisions of this clause 6 do not relate to overseas candidates who are instead dealt with below under clauses 7 and 8 and the subclauses thereto.

**6.2** All casual workers are under contract and employed by Tradestaff. If the Client wishes to employ directly a Tradestaff casual worker themselves during the currency of this contract or within 3 months after the completion of the most recent assignment of the casual worker for the Client, they shall pay Tradestaff's "Finders Fee" in accordance with the following formula (subject to clause 6.3):

**6.2.1** Less than 6 consecutive weeks on assignment with the Client: 10% of first year's expected annual earnings for the work calculated at the current rate of pay plus GST.

**6.2.2** 6 to 12 consecutive weeks on assignment with the Client: 5% of the first year's expected annual earnings for the work calculated at the current rate of pay plus GST.

**6.2.3** 12 consecutive weeks or more on assignment with the Client: 2.5 % of the first year's expected annual earnings for the work calculated at the current rate of pay plus GST.

**6.3** Where a casual worker transfers to the Client's permanent employment after 12 or more consecutive weeks of employment, a minimum of 400 hours for the casual worker must have first been invoiced by Tradestaff to the Client in the preceding 12 week period. Where this has not occurred, the casual worker may not transfer to the Client's permanent employment (even if 12 weeks has expired) until 400 hours have been invoiced to the Client for that casual worker.

**6.4** No casual worker shall transfer to the Client's employment unless all of the Client's account with Tradestaff has been paid in full and strictly in accordance with Tradestaff's agreed terms of payment. If the Client does

employ the worker in breach of this clause they will pay to Tradestaff the full Finder's Fee set out in clause 6.2.1 herein.

**6.5** No guarantee or reimbursement of fees charged, or any other money whatsoever, shall be paid by Tradestaff to the Client where a casual worker who has transferred over to the Client's staff leaves or is terminated by the Client for any reason.

## **7. Specific Terms pertaining to overseas candidates**

### **Transfer of Workers who are overseas people (casual or permanent employment)**

**7.1** The provisions of these Terms and the provisions of this clause 7 shall apply to overseas workers with the exclusion of clause 3.8 (which shall be substituted by the provisions of clause 7.5 and its subclauses thereto).

**7.2** Where the worker is an overseas person and is employed by Tradestaff under a permanent contract of employment, Tradestaff is identified as the employer on the visa of the worker.

**7.3** If the Client wishes to directly employ a Tradestaff worker who is an overseas person, whether on permanent, fixed term or casual employment, the following shall all apply:

**7.3.1** A Transfer fee shall be payable by the Client to Tradestaff calculated at 12% of the projected first year's annual earnings for the worker.

**7.3.2** The Transfer fee shall be payable within 7 days of the worker commencing employment for the Client.

**7.3.3** The Client accepts that they will need to be accredited with Immigration New Zealand to be able to employ a migrant worker directly and to make application to Immigration New Zealand ("INZ") for a change of employer on the visa of the worker. They shall liaise with INZ regarding any such application and note that any person providing immigration advice to them must be licensed by the Immigration Advisors Authority. Nothing in this clause shall be construed as a guarantee or warranty on the part of Tradestaff that INZ shall process or approve such application. In the event that INZ, for whatever reason, declines to process or approve the application, the worker shall continue to be employed by Tradestaff and any fee payable pursuant to clause 7.3.1 shall be returned to the Client by Tradestaff within a reasonable period of time.

**7.4** No guarantee or reimbursement of fees charged, or any other money whatsoever, shall be paid by Tradestaff to the Client where an overseas worker who has transferred over to the Client leaves their employment or is terminated by the Client for any reason.

## **7.5 Overseas Worker Supply Conditions**

**7.5.1** Tradestaff will identify to the Client in all instances where a supplied worker is subject to the additional requirements of this clause 7. Tradestaff will confirm the arrangements in an email that will be sent following the Confirmation of Temporary Assignment supplied at the time of placement to the Client.

**7.5.2** Overseas workers hourly rate will be charged to the Client at a minimum of 30 hours per week plus GST, for each week of the placement. Where the worker works more than 30 hours in a week, the Client will be invoiced for the actual hours worked plus GST.

**7.5.3** Overseas workers are provided to the Client for an assignment period of no less than 3 months duration.

**7.5.4** The Client agrees to provide Tradestaff with no less than 2 working weeks' notice of termination of an assignment where an overseas worker is engaged.

**7.5.6** Where the Client is providing accommodation to the overseas worker, the Client undertakes to ensure that this is of an acceptable New Zealand standard.

**7.5.6** Any variation to the provisions of this clause 7 and its subparts must be agreed in writing between Tradestaff and the Client.

## **8. Disclaimer relating to overseas persons**

**8.1** The Client acknowledges that Tradestaff may be the holder of a visa through INZ for an overseas person. In these instances, Tradestaff will have received evidence of character and information regarding criminal convictions. Tradestaff holds reference checks of all its overseas workers. Tradestaff shall endeavour to provide accurate information about these aspects of its overseas workers to the Client, but the Client expressly acknowledges that such information is based on information made available by the overseas worker and their respective referees to Tradestaff. Under no circumstances shall Tradestaff be held liable, or accept

responsibility, for any errors, omissions, incorrect information or conclusions drawn from such information. No direct or indirect liability will therefore be accepted, nor shall Tradestaff be liable for, any loss or damage, penalties or costs (irrespective of how incurred) suffered by the Client in connection with the supply of such information or the transfer of an overseas worker to the Client's employment.

## **9. Guarantee of Casual Staff**

**9.1** Tradestaff will not charge for any casual worker who, within the first 4 hours on assignment with the Client, the Client deems to be unsuitable, provided that Tradestaff is notified within that timeframe (time being of the essence) and the Client permits Tradestaff to advise the casual worker of their unsuitability within that timeframe (time being of the essence). Where practicable, Tradestaff will replace the unsatisfactory casual worker as soon as is reasonably possible.

**9.2** Where Tradestaff is not so notified, or the casual worker is kept on after 4 hours, the Client shall be charged either the minimum charge of 4 hours or for the actual hours worked by the casual worker for the Client whichever is greater.

## **10. Client Declaration – I confirm that:**

• **I have read, understood and received a copy of the terms and conditions in this contract.**

• **I am authorised by for the Client to enter into this Contract.**

**I wish to pay by Direct Debit and take advantage of the 12-day payment terms referred to in clause 3.9 herein.**

Signed on behalf of Tradestaff

Signature Name		Title:	
Address:		Date:	
Signed for and on behalf of the Client			
Signature Name		Title:	
Address:		Date:	