

TERMS & CONDITIONS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR CONTRACT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT



1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply:

“Candidate” means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body / limited company, and members of the Agency’s own staff;

“Client” means the person; firm or corporate body together with any subsidiary or associated person, firm or corporate body or company as defined by the Companies Act 1985 to which the Candidate is introduced;

“Agency” means Vanilla Recruitment (UK) Limited of 42 Coventry Road, Market Harborough, Leicestershire, LE16 9BZ;

“Engagement” means the engagement, employment or use of the Candidate by the Client or any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“Introduction” means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;

“Introduction Fee” means the fee payable by the Client to the Agency for an introduction resulting in an Engagement;

“Remuneration” includes gross 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 Candidate for services rendered to or on behalf of the Client. Where the Client provides a company car, a notional amount of £3,000 will be added to the salary in order to calculate the Agency’s fee;

“Cancellation Fee” means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.10;

“Replacement Candidate” means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first 12 weeks of the Engagement;

“Data Protection Laws” means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“Vulnerable Person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.

1.2. Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.

1.2.1. The headings contained in these Terms of Business are for convenience only and do not affect their interpretation.

2. THE CONTRACT

2.1. These Terms of Business constitute the contract between the Agency and the Client for the supply of permanent or fixed term contract staff (to be engaged directly by the client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

2.2. These terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms of Business prevail over any other terms of business or purchase conditions put forward by the Client.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency 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.

2.4 The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

3. NOTIFICATION AND FEES

3.1. The Client agrees:

a) To notify the Agency immediately of any offer of an Engagement which it makes to the Candidate;

b) To notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and

c) To pay the Introductory Fee, to be calculated in accordance with the provisions of this clause 3, within 14 days of the date of invoice.

3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of six calendar months from the date of (a) the Introduction, (b) the Client’s withdrawal of an offer of Engagement or (c) the Candidate’s rejection of an offer of an Engagement, (whichever is the later).

3.3 The Introduction Fee is calculated in accordance with the below Fee Structure based on the Remuneration applicable during the first 12 months of the Engagement.

Fee Structure

Remuneration Percentage Charged

£0 - £17,000 Flat fee £3,000

£17,001 - £20,000 18%

£20,001 - £25,000 21%

£25,001 - £50,000 25%

£50,001 + 32%

Minimum placement charge £3,000

3.4 Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.



3.5 Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata, subject to a minimum fee of £3,000. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-engages the Candidate within six calendar months from the date of termination of the agreed period of the fixed term engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for twelve months or more.

3.6 The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights

3.7 The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement.

3.8 The Agency reserves the right to charge standard rate on all fees should payment not be received within the agreed payment terms.

3.9 VAT is charged at the standard rate on all fees.

3.10 The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.11 If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee of 3% of the annual remuneration.

3.12 In the event that any Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Agency the Client shall be liable to pay an Introduction Fee to the Agency calculated in accordance with clause 3.3

4 REFUNDS

4.1 In order to qualify for the following refund, the Client must pay the Agency's fee within 14 days of the date of invoice and must notify the Agency in writing of the termination of the Engagement within 7 days of its termination.

4.2 If the Engagement terminates before the expiry of 12 weeks from the commencement of the Engagement (except where the Candidate is made redundant) the fee will be refunded in accordance with the accompanying Scale of Refund.

4.3 The following scale of refund only applies in the event that the Client complies with the provisions of clause 3.1 & 4.1 of these Terms of Business. Where the Candidate leaves during the first 12 weeks of the Engagement (except where the Candidate is made redundant), a partial refund of the introduction fee shall be paid to the Client in accordance with the scale set out below, subject to the conditions in clause 4.1. and 4.2.

Scale of Refund

Week in which the Candidate leaves Percentage of Introductory fee refunded Service up to 1 week 90%

1 to 2 weeks service 75%

3 to 4 weeks service 50%

5 to 8 weeks service 25%

9 to 12 weeks service 10%

There will be no refund where the Candidate leaves during or after the 13th week of Engagement.

Note also, there is no refund scale for commission only nor self-employed placement nor temporary to permanent conversion.

4.4 In circumstances where clause 3.2 applies the full fee stated in clause 3.3 is payable and there shall be no entitlement to a refund.

4.5 If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of six calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

5 INTRODUCTIONS TO THIRD PARTIES

5.1 Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a "Third Party Introduction". If that Third Party Introduction results in an Engagement of the Candidate by the third party within six months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee in accordance with Clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under Clause 4 in any circumstances.

6 SUITABILITY CHECKS

6.1 The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:

6.1.1 Ensure that it would not be detrimental to the interests of either the Client or the Candidate;

6.1.2 Ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body; and

6.1.3 Confirm that the Candidate is willing to work in the position and

6.1.4 in respect of Introductions prior to 1 October 2010: obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body.

6.2 Notwithstanding clause 6.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:

6.2.1 Taking up any references provided by the Candidate before Engaging the Candidate;

6.2.2 checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;

6.2.3 The arrangement of medical examinations and/or investigations into the medical history of any Candidate; and

6.2.4 Satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.

6.3 To enable the Agency to comply with its obligations under 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:

6.3.1 The type of work that the Candidate would be required to do;

6.3.2 The location and hours of work;



6.3.3 The experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;

6.3.4 Any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;

6.3.5 The date the Client requires the Candidate to commence the Engagement;

6.3.6 The duration or likely duration of the Engagement;

6.3.7 The minimum rate of Remuneration, expenses and any other benefits that would be offered;

6.3.8 The intervals of payment of Remuneration; and

6.3.9 The length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

6.4 Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:

6.4.1 Obtain confirmation of the Candidate's identity;

6.4.2 obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and

6.4.3 Obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

7. INFORMATION TO BE PROVIDED

7.1 When the Agency Introduces a Candidate to the Client the Agency shall inform the Client that they have obtained confirmation of the matters set out in clause 6.1 [and in the case of a position which involves working with Vulnerable Persons the matters in clause 6.4]. 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 Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

8. CONFIDENTIALITY AND DATA PROTECTION

8.1 All information relating to a Candidate is confidential and subject to the Data Protection / GDPR Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the DPA in receiving and processing the data at all times. In addition information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

9. LIABILITY

9.1 The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which is not permitted to exclude under law.

10. NOTICES

10.1 All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

11. SEVERABILITY

11.1 If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

12. GOVERNING LAW AND JURISDICTION

12.1 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

I confirm I am authorised to sign these Terms on behalf of the Client.

Signature:

Print Name and Position:

Date: