

# WELFORD KING RECRUITMENT

## Terms of Business

### Introduction of Candidates to Clients for Direct Employment/Engagement

#### **1. Definitions**

In these Terms-

- 1.1 "Client" means the person, firm or corporate body to whom the Employment Agency Introduces a Candidate;
- 1.2 "Candidate" means the person Introduced by the Employment Agency to the Client for an Engagement including, but not limited to, any officer or employee of the Candidate if the Candidate is a limited company, any member or employee of the Candidate if the Candidate is a limited liability partnership, and members of the Employment Agency's own staff;
- 1.3 "Engagement" means the engagement, employment or use of the Candidate by the Client or by any Third Party to whom or to which the Candidate was Introduced by the Client (whether with or without the Employment Agency's knowledge or consent) on a permanent or temporary basis, howsoever engaged (whether directly or indirectly); and "Engages" and "Engaged" shall be construed accordingly;
- 1.4 "Remuneration" includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, shift allowances, location weighting and call-out allowances, the benefit of a company car and all other payments or 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 £5000 will be added to the salary in order to calculate the Employment Agency's fee;
- 1.5 "Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003, and references to a particular Regulation are references contained therein;
- 1.6 "Introduction" means-
  - a. The interview of a Candidate in person or by telephone; or
  - b. the passing of a curriculum vitae or information about the Candidate.

The time of the Introduction shall be taken to be the earlier of a) and b) above; and "Introduced" and "Introduces" shall be construed accordingly;

- 1.7 "Terms" means these Terms of Business as further defined with clause 2;
- 1.8 "Third Party" means any company or person who is not the Client. For the avoidance of doubt, subsidiary and associated companies of the Client (as defined by s. 1159 of the Companies Act 2006 and s.416 of the Income and Corporation Taxes Act 1988 respectively) are included in this definition.

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## **2. These Terms**

- 2.1 These Terms constitute the entire agreement between the Employment Agency and the Client in relation to the subject matter hereof and are deemed to be accepted by the Client and to apply by virtue of (a) an Introduction to the Client of, or the Engagement by the Client of, a Candidate or (b) the passing of information about the Candidate by the Client to any Third Party or (c) the Client's interview or request to interview a Candidate or (d) any other written expressed acceptance of these Terms. For the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by the Client for the same type of work as that for which the Introduction was originally effected.
- 2.2 These Terms supersede all previous agreements between the parties in relation to the subject matter hereof.
- 2.3 These Terms prevail over any other terms of business or purchase conditions put forward by the Client.
- 2.4 The Client authorises the Employment Agency to act on its behalf in seeking Candidates and, if the Client so requests, shall advertise for such Candidates through such methods as are agreed with the Client.
- 2.5 For the purposes of these terms, the Employment Agency acts as an employment agency as defined within the Regulations.

## **3. Obligations of the Employment Agency**

- 3.1 The Employment Agency shall use reasonable endeavours to introduce one or more suitable Candidates to meet the requirements of the Client for any particular vacancy. The Employment Agency cannot guarantee to find a suitable Candidate for each vacancy. Without prejudice to clause 3.2 below, the Employment Agency shall use reasonable endeavours to ascertain that the information provided by the Employment Agency to the Client in respect of the Candidate is accurate.
- 3.2 The Employment Agency accepts no responsibility in respect of matters outside its knowledge and the Client must satisfy itself as to the suitability of the Candidate.

## **4. Client Obligations**

- 4.1 The Client shall satisfy itself as to the suitability of the Candidate. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, and satisfying other requirements, qualifications or permission required by law of the country in which the Candidate is engaged to work.
- 4.2 To enable the Employment Agency to comply with its obligations under clause 3 the Client undertakes to provide to the Employment Agency details of the position which the Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of

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work; 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; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks.

- 4.3 The Client shall provide details of the date the Client requires the Candidate to commence work, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with the Client.
- 4.4 The Client shall inform the Employment Agency of any information it has that suggests it would be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill.
- 4.5 The Client shall inform the Employment Agency within 3 working days where it receives details of a Candidate from the Employment Agency which it has already received from another agency in relation to the same vacancy. If no such notification is given by the Client then, in the event of an Engagement, the Client agrees the Employment Agency is entitled to charge a fee in accordance with clause 5.2.
- 4.6 The Client agrees to –
  - a. notify the Employment Agency as soon as possible (and in any event, not later than 7 days from the date of the offer or from the date the Engagement takes effect; whichever is earlier) of any offer of an Engagement which it makes to the Candidate; and
  - b. notify the Employment Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration to the Candidate; and
  - c. pay the Employment Agency's fee within the period set out under clause 6.2.
- 4.7 The Client shall not, and shall not seek to cause the Employment Agency to, unlawfully discriminate in relation to the services provided by the Employment Agency to the Client in connection with these Terms and shall disclose any and all information requested by the Employment Agency in the event a Candidate makes a complaint to the Employment Agency.

## **5. Charges/Fees**

- 5.1 Introductions of Candidates are confidential. Where the Client discloses to a Third Party any details regarding a Candidate Introduced to the Client by the Employment Agency and that Third Party subsequently Engages the Candidate within 12 months from the date of the Introduction, the Client shall pay the Employment Agency's fee as set out in clause 5.3. and there shall be no entitlement to any rebate or refund to the Client or to the Third Party.
- 5.2 The Client shall pay the Employment Agency a fee calculated in accordance with clause 5.3 where it Engages, whether directly or indirectly, any Candidate Introduced by or through the Employment Agency within 12 months from the date of the Employment Agency's Introduction.

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- 5.3 The fee shall be calculated as 15% of the Candidate's Remuneration applicable during the first 12 months of the Engagement. The Employment Agency will charge VAT on the fee where applicable.
- 5.4 Where the amount of the actual Remuneration is not known or disclosed, the Employment Agency will charge a fee calculated in accordance with clause 5.3 on the maximum level of remuneration applicable for the position or type of position the Candidate had been originally submitted to the Client for and/or comparable position in the general marketplace.
- 5.5 Where the Engagement is for a fixed term of less than 12 months, the fee in clause 5.3 will apply and will apply pro-rata. Where the Engagement is extended beyond the initial fixed term or where the Client re-engages the Candidate within 12 months from the date of planned or actual termination (as applicable) of the first Engagement, the Client shall pay a further fee based on the Remuneration applicable for the period of Engagement following the initial fixed term period up to the termination of the second Engagement or until the Candidate has been engaged for a total of one year.

## 6. Invoices

- 6.1 Except in the circumstances set out in clause 5.1, no fee is incurred by the Client until the Candidate commences the Engagement; whereupon the Employment Agency will render an invoice to the Client for its fees.
- 6.2 The Employment Agency shall raise invoices in respect of the charges payable and the Client agrees to pay the amount due within 14 days of the date of the invoice. Failure to pay within these terms will result in the removal of the rebate period outlined in 7.1
- 6.3 All invoices will be deemed to be accepted in full by the Client in accordance with the payment terms stated within clause 6.2 unless the Client notifies the Employment Agency in writing within 5 days of the amount the Client disputes and the reason the Client disputes that amount. In the event the Client does so notify the Employment Agency that it wishes to dispute part of an invoice, the Client shall pay the undisputed part of the invoice within the agreed payment terms and shall co-operate fully with the Employment Agency in order to resolve the dispute as quickly as possible.
- 6.4 The Employment Agency reserves the right to charge interest on invoiced amounts overdue at the statutory rate as prescribed pursuant to Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998

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## 7. Rebates

- 7.1 Where the Client qualifies for a rebate in accordance with clause 7.2, and the Engagement of the Candidate is terminated by the Client or by the Candidate within the time periods specified below, the Client shall be entitled to a rebate of the introduction fee as follows -
- Duration of Employment (Weeks) - Percentage of Fee to be rebated
- 0 – 4 weeks - 100%
  - 5 – 8 weeks - 50%
  - 9 – 12 weeks - 25%
- 7.2 The following conditions must be met in order for the Client to qualify for a rebate -
- a. the Client must notify the Employment Agency that the Candidate's Engagement has ended within 7 days of the Engagement ending or within 7 days of notice being given to end the Engagement; whichever is earlier;
  - b. the Employment Agency's invoice for the fee must have been paid within the payment terms in accordance with clause 6.2;
  - c. the Candidate's engagement is not terminated by reason of redundancy or re-organisation or change in strategy of the Client;
  - d. the Candidate did not leave the Engagement because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to the Candidate's acceptance of the Engagement;
  - e. the Candidate did not leave the Engagement as a result of discrimination or other acts against the Candidate; and
  - f. the Candidate was not at any time in the 12 months prior to the start of the Engagement employed or hired (whether on a permanent or contract basis) by the Client.
- 7.3 Where the Client re-engages the Candidate either on an employment or indirect basis, any rebate paid to the Client under clause 7.1 in respect of that Candidate, shall be immediately repaid to the Employment Agency by the Client.

## 8. Liability and Indemnity

- 8.1 The Employment 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 Employment Agency seeking a Candidate for the Client or from the Introduction or Engagement of any Candidate by the Client or from the failure of the Employment Agency to introduce any Candidate or from the Client's disclosure to a Third Party of any details regarding a Candidate.
- 8.2 Notwithstanding clause 8.1 above, nothing in these Terms shall be deemed to exclude or restrict any liability of the Employment Agency to the Client for death or personal injury.

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- 8.3 The Client shall indemnify and keep indemnified the Employment Agency against any and all costs (including legal costs), claims or liabilities incurred directly or indirectly by the Employment Agency arising out of or in connection with these Terms including (without limitation) as a result of -
- a. any breach of these Terms by the Client or by its employees or agents; and/or
  - b. any breach by the Client or Third Party, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity, immigration legislation and the Regulations); and/or
  - c. any unauthorised disclosure of a Candidate details by the Client or Third Party, or any of its employees or agents.
- 8.4 The Employment Agency shall not be liable for failure to perform its obligations under these Terms if such failure results by reason of any cause beyond its reasonable control.

## **9. Dispute Resolution and Termination**

- 9.1 These Terms may be terminated by either party by giving to the other immediate notice in the event that either the Employment Agency or the Client goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a receiver or administrator appointed or where the Employment Agency has reasonable grounds to believe the Client will not pay the Employment Agency's invoice within the payment terms agreed within clause 6.2.
- 9.2 Any dispute arising under or out of this agreement may be referred by either the Employment Agency or the Client to an adjudicator for adjudication in accordance with the Adjudication Rules published by the Technology and Construction Solicitors Association (2002 Version 2.0). Without prejudice to the right conferred on either the Employment Agency or the Client in this clause any dispute or difference between the parties arising under or out of this agreement shall be determined by legal proceedings.

## **10. Confidentiality**

- 10.1 All information contained within these Terms shall remain confidential and the Client shall not divulge it to any Third Party save for its own employees and professional advisers and as may be required by law.
- 10.2 The Client shall not without the prior written consent of the Employment Agency provide any information in respect of the Candidate to any Third Party whether for employment purposes or otherwise.
- 10.3 The Client agrees to comply with the Data Protection Act 1988 ("the Act") and shall not cause or seek to cause the Employment Agency to breach the Act in connection with these Terms and shall provide

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any and all information requested by the Employment Agency in a timely manner to assist the Employment Agency to respond to a Data Subject access request (as defined within the Act).

## 11. General

- 11.1 Any failure by the Employment Business to enforce at any particular time any one or more of these Terms shall not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.
- 11.2 Headings contained in these Terms are for reference purposes only and shall not affect the intended meanings of the clauses to which they relate.
- 11.3 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 11.4 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of these Terms shall remain in full force and effect to the extent permitted by law.
- 11.5 Any reference to legislation, statute, act or regulation shall include any revisions, re-enactments or amendments that may be made from time to time.

## 12. Notices

- 12.1 Any notice required to be given under these Terms (including the delivery of any information or invoice) shall be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purposes of these Terms).
- 12.2 Notices shall be deemed to have been given and served -
  - a. if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery; or
  - b. if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or
  - c. if sent by prepaid first class post, 48 hours from the time of posting.

## 13. Variation

- 13.1 No variation or alteration of these Terms shall be valid unless approved in writing by the Client and a director of the Employment Agency.

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## **14. Applicable Law**

- 14.1 These Terms shall be construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales