

Terms of business for the introduction of Permanent or Fixed contract staff

1. DEFINITIONS

1.1. These definitions and rules of interpretation apply in these terms of business.

“Assignment” Means the period during which the candidate is supplied by the Agency to render the services of the Client;

“Candidate” Means the person introduced by the Agency to the Client for an Engagement including any employee or other representative of the Candidate if the Candidate is a Corporate body, and members of the Agencies own staff;

“Agency” Means the employment agency that introduced the applicant to the Hirer as confirmed in the introduction made by 5 and 2 Education Limited (Registered Company Number 16614894) of Registered address 22 Crome Road, NW10 2GA ;

“Client” Means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body to whom the candidate is introduced;

“Business day” Means a day other than a Saturday, Sunday or public holiday when banks in London are open for business;

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“Data protection laws” Means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any other applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“Engagement” Means the engagement (including the candidates acceptance of the clients offer), employment or use of the Candidate by the Client or by any other 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

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any other agreement; 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 “Introduces” and “introduced” shall be construed accordingly;

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

“Losses” Means any and all losses, liabilities, claims, damages, obligations, payments, costs and expenses, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

“Remuneration” Includes gross base salary of fees, guaranteed and/or anticipated bonuses and commission earnings, allowances, inducement payments, the benefit of the 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 or any third party;

“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 otherwise requires, references to the singular including the plural and references to the masculine including the feminine and vice versa.

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

2. THE CONTRACT

2.1. These terms constitute the contract between the Agency and the Client for the supply of the Candidate's services by the Agency to the Client and are deemed to be accepted by the Client by the virtue of its request for, interview with the Engagement of the Candidate or the passing of any information about the 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 director the Agency, these Terms prevail over any 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 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 to:

3.1.1. Notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate.

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

3.1.3. Pay the Introduction Fee to be calculated in accordance with the provisions of this clause 3, by the due date(s) for payment in clause.

3.2. The Introduction Fee in accordance with clause 3.3 will be charged in relation to;

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- (a) any Candidate Engaged, whether by the Client or a third party, as a consequence of or resulting from an Introduction by or through the Agency, whether directly or indirectly, within three calendar months of the date of the Introduction by the Agency;
- (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).

3.2.1. The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate accepts the offer of the Engagement, whether such offer is conditional or not.

3.3. An Introduction Fee calculated as follows: 20% of the enumeration applicable during the first 12 months of the Engagement, or if the amount of the Remuneration is not known the Agency will charge the an Introduction fee calculated in 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.

3.4. Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be based on a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client:

- (a) extends the Engagement beyond the initial fixed term or
- (b) re-Engages the Candidate within 6 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

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liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.

3.5. VAT is payable in addition to any fee due.

3.6. 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. The interest rate will be 4% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.7. 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, or within 3 months of leaving the Agency, the Client shall be liable to pay the Agency a fee equivalent to the Introduction Fee calculated in accordance with clause 3.3. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 3.7 in any circumstances.

4. REFUNDS

4.1. If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 4 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2. A full refund is payable. If any of the above occurs after this 4 week period the refund period will have expired so a refund will not be payable.

4.2. In order to qualify for the refund set out in clause 4.1, the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement;

4.3. There will be no refund where the Candidate's Engagement is terminated (or the Engagement would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 5th week of the Engagement;

4.4. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.

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4.5. In circumstances where clause 3.4 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.

4.6. If, subsequent to the Client receiving a refund, the Candidate is re-Engaged within a period of 6 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 reEngagement of this Candidate.

5. INTRODUCTIONS TO THIRD PARTIES

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 6 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 calculated in accordance with clause 3.3. 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

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 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;

6.1.3. Confirm that the Candidate is willing to work in the position [; and]

6.1.4. 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 must 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

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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

6.2.3. 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 clause 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

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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. SPECIAL SITUATIONS

7.1 Where the Agency Worker 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, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer:

(i) Copies of any relevant qualifications or authorisations of the Agency Worker, and;

(ii) Two references from persons not related to the Agency Worker who have agreed that the references they provide may be disclosed to the Hirer as taken all reasonably practicable steps to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above it shall inform the Hirer of the steps it has taken to obtain this information in any event.

7.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006.

7.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the

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Safeguarding Vulnerable Groups Act 2006 and to allow the Employment Business to select a suitable Agency Worker for the Assignment.

7.4. In particular in the event that the Hirer removes an Agency Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.