

EMPLOYMENT AGENCY

TERMS AND CONDITIONS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT



1. DEFINITIONS

1.1 In these Terms the following definitions apply:

"Agency" means Central Employment Agency (North East) Limited of 34-36 St Mary's Place, Newcastle upon Tyne, NE1 7PQ;

"Applicant" means the person introduced by the Agency to the Client for an Engagement including any members of the Agency's own staff;

"Client" means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to whom the Applicant is introduced;

"Engagement/Engages/Engaged/Engaging" means the engagement, employment or use of the Applicant by the Client, or any third party to whom the Client has introduced the

Applicant, 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;

"Introduction/Introduces/Introduced" means (i) the Client's interview of an Applicant in person or by telephone, following the Client's instruction to the Agency to search for an Applicant; or (ii) the passing to the Client of a curriculum vitae or other information which identifies the Applicant and which leads to an Engagement of that Applicant, whichever is earlier;

"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 Applicant for services rendered to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £3000 will be added to the salary in order to calculate the Employment Agency's fees.

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

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

2. THE CONTRACT

2.1 These Terms constitute the contract between the Agency and the Client and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of an Applicant, or the passing of any information about the Applicant to any third party following an Introduction.

2.2 Unless otherwise agreed in writing by the Agency, these Terms shall prevail over any other Terms or purchase conditions put forward by the Client.

2.3 No variation or alteration of these Terms shall be valid unless approved in writing by the Agency.

3. NOTIFICATION AND FEES

3.1 The Client agrees: -

3.1.1 to notify the Agency immediately of any offer of an Engagement which it makes to the Applicant;

3.1.2 to notify the Agency immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the annual Remuneration to the Agency; and

3.1.3 to pay the Agency's fee within 14 days of the date of the invoice.

3.2 Except in the circumstances set out in clause 5 below, no fee is incurred by the Client until the Applicant commences the Engagement, when the Agency will render an invoice to the Client for its fees.

3.3 The Client shall be liable to pay to the Agency a fee for each Engagement beginning within 6 calendar months from an Introduction. Such fees shall be calculated in accordance with the Fee Structure at clause 9 below. For the purposes of this clause, the calculation shall be based on the Remuneration applicable during the first 12 months of the Engagement. VAT will be charged on the fee.

3.4 The Agency reserves the right to charge interest on invoiced amounts unpaid for more than 14 days at the rate of 5% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.5 In the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.3 will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Applicant within 3 calendar months from the date of 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 the sooner.

3.6 For the avoidance of doubt, in the event of an Introduction of an Applicant by more than one employment agency or employment business, the fee in clause 3.3 shall remain payable by the Client, unless the Client can provide written evidence that the Applicant's details were received in writing from another employment agency or employment business before being received from the Agency.

4. REFUNDS

4.1 In order to qualify for any refund, the Client must pay the Agency's fee within 14 days of the date of the 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 8 weeks from the commencement of the Engagement (except where the Applicant is made redundant) the fee will be refunded in accordance with the Scale of Refunds at clause 10 below.

5. CANCELLATION FEE

If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency a minimum fee of £1000.

6. THIRD PARTY INTRODUCTIONS

6.1 Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Agency which results in an Engagement with that third party within 6 months of the Introduction renders the Client liable to payment of the Agency's fee as set out in clause 3.3 with no entitlement to any refund.

6.2 An introduction fee calculated in accordance with clause 3.3 will be charged in relation to any Applicant Engaged as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 6 months from the date of the Agency's Introduction.

6.3 Where the amount of the actual Remuneration is not known the Agency will charge a fee calculated in accordance with clause 3.3 on the minimum level of Remuneration applicable for the position in which the Applicant has been Engaged with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally for such positions.

6.4 In the event that any employee of the Agency with whom the Client has had personal dealings accepts an Engagement with the Client within 6 months of leaving the Agency's employment, the Client shall be liable to pay an introduction fee to the Agency in accordance with clause 3.3.

7. SUITABILITY & REFERENCES

7.1 The Agency endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant 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 that the Applicant is willing to work in the position which the Client seeks to fill.

7.2 At the same time as proposing an Applicant to the Client the Agency shall inform the Client of such matters in clause 7.1 as they have obtained confirmation of. 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 Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the Client.

7.3 The Agency endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.

7.4 The Agency endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.

- 7.5 Notwithstanding clauses 7.1, 7.2, 7.3 and 7.4 above the Client shall satisfy itself as to the suitability of the Applicant and the Client shall take up any references provided by the Applicant to it or the Agency before Engaging such Applicant. 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 Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is Engaged to work.
- 7.6 To enable the Agency to comply with its obligations under clauses 7.1, 7.2, 7.3 and 7.4 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of 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 Applicant 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. In addition the Client shall provide details of the date the Client requires the Applicant to commence the Engagement, the duration or likely duration of the Engagement; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and length of notice that the Applicant would be entitled to give and receive to terminate the Engagement.
- 7.7 The Agency shall notify the Client immediately if, within 3 months from the introduction of an Applicant, it receives or otherwise obtains information which gives it reasonable grounds to believe that an Applicant introduced to the Client is unsuitable for the position in which he/she is Engaged.
- 7.8 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Applicant for the Applicant to work in the position which the Client seeks to fill and shall notify the Agency immediately if the position changes.

8. SPECIAL SITUATIONS

Where the Applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work 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 Agency will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant 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 Applicant is suitable for the position. If the Agency 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.

9. FEE STRUCTURE

Salary of Applicant	Percentage Fee Payable
£0 - £9,999	10%
£10,000 - £19,999	15%
£20,000 Plus	18%

10. SCALE OF REFUND

- 10.1 The following scale of refund only applies in the event that the Client complies with the provisions of clause 3.1 of these Terms.
- 10.2 Where the Applicant leaves during the first 8 weeks of the Engagement, 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.
- 10.3
- | Week in which the Applicant leaves | % of introduction fee refunded |
|------------------------------------|--------------------------------|
| 0-1 | 90% |
| 2-4 | 75% |
| 5-8 | 50% |

10.4 There will be no refund where the Applicant leaves during or after the 9th week of the Engagement.

11. LIABILITY

- 11.1 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 an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of the Agency to introduce any Applicant. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for fraud.
- 11.2 The Client shall indemnify and keep the Agency indemnified in full against any and all costs, claims, damages, fines, penalties and liabilities incurred by the Agency as a result of any act, error or omission of the Client or the Applicant throughout the duration of the Engagement (including but not limited to any negligence, breach of statutory duty or breach by the Client of its obligations pursuant to these Terms).
- 11.3 All warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.

12. RELATIONSHIP BETWEEN THE PARTIES

- 12.1 Where the Agency has given notice to the Client that these Terms apply, the Agency will operate as an employment agency in relation to the Client and the Applicant.
- 12.2 Nothing contained in these Terms or any other contract between the Agency and the Client for the Introduction of an Applicant to the Client is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party.

13. WAIVER

- 13.1 Failure or delay by the Agency in enforcing or partially enforcing any provision of these Terms is not a waiver by the Agency of any of its rights.
- 13.2 Any waiver by the Agency of any breach by the Client is not a waiver of any subsequent breach.

14. LEGISLATION

- 14.1 The Agency is an equal opportunities organisation and is committed to providing equal opportunities to its Applicants. This means that all Applicants and other individuals dealing with the Agency will receive equal treatment regardless of race, colour, ethnic or national origins, religion or belief, sex, marital status, age, sexual orientation or disability. The Client acknowledges this policy and agrees to conduct its relationship with the Agency and any Applicants in accordance with equal opportunities.
- 14.2 The Agency recognises its obligations under the Data Protection Act 1998 ("DPA") in relation to processing personal data and complies with the requirements of the DPA in the operation of its business. The Client acknowledges it has responsibilities under the DPA and undertakes to comply with the DPA in relation to any data concerning an Applicant howsoever such data comes into the possession of the Client. The Client shall indemnify and keep the Agency indemnified in full against any and all costs, claims, damages, fines, penalties or liabilities incurred as a result of a breach of this clause by the Client.
- 14.3 These Terms and any other contract between the Agency and the Client are subject to English Law and the exclusive jurisdiction of the English Courts.
- 14.4 The various provisions and sub-provisions of these Terms are severable and if any provision or identifiable part of it is held to be unenforceable by any Court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remainder of these Terms.

15. ADVERTISING

- 15.1 The Client authorises the Agency to advertise, as may be necessary, to find Applicants for any position, details of which the Client has provided to the Agency and for which the Client has asked the Agency to advertise.
- 15.2 The cost of such advertising in the national or local press, or any other media, shall be payable by the Client in full within seven days of the date of any invoice raised by the Agency, providing the Client has agreed to the advertising.

Company Name

Client Name

Signed for and on behalf of the Client Date.....