

**TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF TO BE DIRECTLY ENGAGED BY THE CLIENT**

**1. DEFINITIONS**

1.1. In these Terms the following definitions apply:

- “Agency”** Swan Recruitment Ltd. (registered company no.2725219) of 3 Acorn Business Centre, Northharbour Road, Cosham, Portsmouth PO6 3TH, UK.. “The Agency”.
- “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;
- “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, 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 (as the case may be) to which the Candidate is Introduced;
- “Engagement”** means the engagement, employment or use of the Candidate by the Client or by 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; 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 vitæ 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 or any third party. Where the Client provides a company car, a notional amount of £5,000 will be added to the salary in order to calculate the Agency’s fee;
- “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;

- 1.2. Unless the context requires otherwise, references to the singular include the plural and the masculine includes 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 of business and the attached Schedule(s) ("**the Terms**") constitute the contract between the Agency and the Client for the supply of permanent or 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 prevail over any other terms of business or purchase conditions (or similar) 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 a director of 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 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.
- 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 the Introduction.
- 3.3. The Introduction Fee is fixed at 10% of annual salary.
- 3.4. The Introduction Fee shall be payable within 30 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.

- 3.5. VAT is charged at the standard rate on all fees.
- 3.6. The Agency will issue reminders every 14 days from the date of invoice. The Agency reserves the right to charge interest on invoiced amounts unpaid after 30 days from the date of the 1<sup>st</sup> reminder at the rate of 2% per annum above the base rate from time to time of HSBC Bank.

#### 4. REFUNDS

- 4.1. In order to qualify for the refund set out in clause 4.1, then
  - 4.1.1. 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; and
  - 4.1.2. the Client must exclusively give the Agency [4] weeks from the date of the notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after [4] weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of [12] weeks from the date of commencement of the Engagement the Client will then be eligible for a refund, subject to the rest of clause 4.
- 4.2. 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.
- 4.3. 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

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. 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.

## **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

## **8. CONFIDENTIALITY AND DATA PROTECTION**

All information relating to a Candidate is confidential and subject to the Data Protection Act 1998 ("DPA") 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**

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 it is not permitted to exclude under law.

## **10. NOTICES**

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**

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**

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

**SCHEDULE: SCALE OF REFUND (Clause 4.1)**

1. The following scale of refund only applies in the event that the Client complies with the provisions of clauses 3.1 and 4.1 of these Terms.
2. Where the Candidate ceases working for the Client during the first 24 weeks of the Engagement (except where the Candidate is or will be made redundant) or fails to commence an Engagement, except in the circumstances set out in clause 3.10, a 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

<b>Weeks In which the engagement terminates in accordance with clause 4.2</b>	<b>% of introduction fee refunded</b>
Non Commencement	100%
1-2	90%
3-4	90%
5-6	90%
7-8	50%
9-10	50%
11-24	25%