

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM STAFF

1. DEFINITIONS

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

"Agency"	means Millar Cameron Ltd of 3 Kings Meadow, Osney Mead, Oxford, Oxfordshire OX2 0DP.
"Applicant"	means the person introduced by the Agency to the Client for an Engagement including any officer or employee of the Applicant if the Applicant is a limited company and, where clause 5.5 is applicable, 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 which the Applicant is introduced;
"Engagement"	means the engagement, employment or use of the Applicant by the Client or any third party on a permanent or temporary basis, whether under a contract of service or for services, under an agency, licence, franchise or partnership agreement or arrangement, or any other direct or indirect engagement;
"Introduction"	means (i) the Client's interview of an Applicant in person or by telephone or web-conference, 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 information, verbally or in writing, which expressly or impliedly identifies the Applicant;
"Remuneration"	includes gross basic salary or fees, guaranteed bonuses, fixed allowances, inducement payments and any other emoluments payable to the Applicant pursuant to the Engagement.

1.2. Unless the context requires otherwise, references to the singular include the plural.

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

1.4. The Agency will operate as an employment agency in relation to the provision of services to the Client under these Terms.

1.5. The Agency will have no authority to enter into a contract with an Applicant on behalf of the Client.

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 by the Client following an Introduction.

2.2. These Terms contain the entire agreement between the parties and, unless otherwise agreed in writing by a duly authorised officer of the Agency, these Terms shall 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 (acting by one of its directors) 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 These Terms supersede any other terms of business previously agreed between the Agency and the Client.

3. NOTIFICATION AND FEES

3.1. The Client agrees:

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

3.1.2. to notify the Agency immediately when an offer of Engagement to the Applicant has been accepted and to provide full details of the Remuneration to the Agency; and

3.1.3. to pay the Agency's fee within 14 days of the date of invoice. Time for payment shall be of the essence.

- 3.2. Except in the circumstances set out in clause 3.6 below, no fee shall be incurred by the Client until the Applicant accepts the offer of the Engagement (whether such an offer shall be conditional or not) at which time the Agency will render an invoice to the Client for the introduction fee.
- 3.3 The introduction fee payable to the Agency by the Client for an Introduction resulting in an Engagement is an amount equal to a percentage of the Remuneration applicable to the Applicant during the first 12 months of the Engagement, calculated in accordance with the following scale:

<u>Remuneration</u>	<u>% charged</u>
\$0 - \$39,999	25%
\$40,000 and over	30%

If applicable, VAT and/or any withholding tax liability will be charged on the introduction fee. In the event of any guarantee or retainer being for a period of less than 12 months, the fees shall be calculated as if the guarantee or retainer is for a period of 12 months.

- 3.4 In the event that the Engagement is for a fixed term of less than 12 months, the introduction fee in clause 3.3 will apply pro-rata and the rebate period referred to in clause 4.2 shall be reduced pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Applicant within six calendar months from the date of termination of the first Engagement, the Client shall be liable to pay a further fee based on the Remuneration for such additional period(s) of Engagement.
- 3.5 If the Agency's invoice remains unpaid after 14 days from the date of invoice, the Agency may:
- 3.5.1 Pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation and interest on such invoiced amounts at the rate of 8% per annum above the base rate of the Bank of England from the due date until the date of payment; and
- 3.5.2 Refer the collection of such payment to a debt collection agency or legal representatives and, if so referred, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by the Agency in recovering payment from the Client.
- 3.6 The Client will be liable to pay a cancellation fee of 50% of the full introduction fee if:
- 3.6.1 the Client hires an Applicant when engaging the Agency in an exclusive recruitment contract, from any other source including their own; or
- 3.6.2 the Client decides for any reason to withdraw the offer prior to the Applicant accepting the Engagement.
- 3.7 Save where the Agency agrees that the introduction fee may be charged in US Dollars or Euros, all introduction fees shall be charged to the Client in Pounds Sterling (GBP). Where an Applicant's Remuneration is not provided in GBP and the introduction fee is to be charged in GBP, the Agency shall convert the Remuneration to GBP using the exchange rate published by the Bank of England on the date of invoice. The Client shall bear all banking and currency exchange charges when paying the Agency's invoice.
- 3.8 Where the Client is liable to deduct withholding tax from its payments to the Agency and there is no Double Taxation Treaty in place permitting the Agency to offset such deduction against its liability for corporation tax, the total introduction fee payable by the Client shall be uplifted by an amount equivalent to such withholding tax deduction prior to such deduction being made.

4. REBATE POLICY

- 4.1. In order to qualify for the following rebate, the Client must:
- 4.1.1. have paid the Agency's invoice within 14 days of the date of invoice;
- 4.1.2. notify the Agency in writing of the termination of the Engagement within 7 days of its termination; and
- 4.1.3. not have unfairly dismissed the Applicant or made the Applicant redundant

- 4.2. Subject to clause 4.1, if the Engagement terminates before the expiry of 8 weeks from commencement of the Engagement, the Client shall be entitled to a full or partial rebate of the introduction fee, which will be applied against any subsequent recruitment spend by the Client within one year of the date on which the engagement commenced. The rebate shall be calculated in accordance with the following scale, subject to a deduction of £150 in respect of administration costs:

Period of Engagement	Percentage of Rebate
Week 1	100%
Week 2	80%
Week 3	60%
Week 4	40%
Week 5	30%
Week 6	20%
Week 7	10%
Week 8+	nil

5. INTRODUCTIONS

- 5.1. The Client agrees the Agency shall be the effective cause of any Engagement of an Applicant Introduced by the Agency, whether or not the Applicant was already known to the Client, unless the Client provides evidence to the Agency's reasonable satisfaction which shows that the Client was already in active discussions with the relevant Applicant in respect of the specific vacancy at the time that the Agency Introduced the Applicant.
- 5.2. An introduction fee calculated in accordance with clause 3.3 will be charged in respect of any Applicant Engaged within 12 months from the date of the Agency's Introduction.
- 5.3. Where the amount of the actual Remuneration is not known, the Agency may charge an introduction fee calculated in accordance with clause 3.3 based on the remuneration which the Agency reasonably believes to be the market rate for the relevant role.
- 5.4. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Agency which results in the third party Engaging the Applicant within 12 months of the Agency's Introduction shall render the Client liable to an introduction fee calculated in accordance with clause 3.3. The Client shall have no entitlement to a refund if such Engagement subsequently terminates.
- 5.5. In the event that any employee of the Agency with whom the Client has had personal dealings accepts an Engagement with the Client within 12 months of leaving the Agency's employment, the Client shall be liable to pay an introduction fee to the Agency which shall be calculated in accordance with clause 3.3.

6. SUITABILITY AND REFERENCES

- 6.1. The Agency shall use reasonable endeavours to ensure the suitability of any Applicant introduced to the Client by taking reasonably practicable steps to:
- 6.1.1. ensure that the Engagement would not be detrimental to the interests of the Client or the Applicant;
 - 6.1.2. ensure that both the Client and the Applicant are aware of any requirements imposed by law or by any professional body for the Applicant to work in the relevant position; and
 - 6.1.3. confirm that the Applicant is willing to work in the relevant position.
- 6.2. Notwithstanding clause 6.1, the Client shall satisfy itself as to the suitability of the Applicant for the position they are seeking to fill by:
- 6.2.1. obtaining references for the Applicant;
 - 6.2.2. conducting any background and credit checks, medical examinations and other checks on the Applicant as the Client considers appropriate;
 - 6.2.3. ensuring that the Applicant is legally entitled to work in the United Kingdom or such location as the Client requires the Applicant to work; and
 - 6.2.4. checking any other qualifications, certifications, professional memberships, authorisations or permissions required for the Applicant to be Engaged by the Client.
- 6.3. To enable the Agency to comply with its obligations under clause 6.1, the Client shall provide to the Agency relevant information about the position which the Client is seeking to fill, including all such information as is specified in Regulation 18 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

7. CONFIDENTIALITY & DATA PROTECTION

- 7.1. The Introduction of an Applicant is confidential and, unless the Client Engages the Applicant, the Client shall not disclose the Applicant's details to any third party without the express written consent of the Agency.
- 7.2. The Client shall comply in all respects with the Data Protection Act 1998, and any similar legislation which is applicable in the Client's location, when handling personal data and sensitive personal data relating to an Applicant and shall not use any such data provided by the Agency for any other purpose.
- 7.3. Where the Client is located within the United Kingdom, the Client warrants that it is registered as a Data Controller with the Information Commissioners Office.

8. LIABILITY

- 8.1. Whilst the Agency will use reasonable endeavours to ensure that any Applicant Introduced to the Client matches the criteria specified by the Client, the Client is responsible for making the decision as to whether the Applicant is suitable for an Engagement and the Agency shall have no liability to the Client if it is later established that an Applicant does not meet the Client's requirements.
- 8.2. The Agency shall be liable to the Client for any claim arising out of or in connection with these Terms solely to the extent that such claim arises as a direct result of the acts or omissions of the Agency.
- 8.3. The Agency shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or for any indirect or consequential loss arising out of or in connection with the performance or non-performance of these Terms.
- 8.4. Save to the extent that liability may not be limited or excluded by law, the aggregate liability of the Agency to the Client in respect of any claim or series of claims arising out of or in connection with the performance or non-performance of these Terms, and whether arising in contract, tort (including negligence) or otherwise, is limited to the introduction fee paid by the Client to the Agency in respect of the Engagement in relation to which such claim arises or, if there was no Engagement, the sum of £1,000.
- 8.5. Any legal claim which the Client may bring against the Agency arising out of or in connection with these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.
- 8.6. The Client shall indemnify the Agency against all losses, damages, expenses, costs or claims suffered or incurred by the Agency as a result of the Client's breach of contract, negligence, breach of statutory duty or otherwise.

9. LAW

- 9.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of the Agency.
- 9.2. The Client shall not set off any sums due to the Client against any sums it owes to the Agency under these Terms or any other contract entered into with the Agency.
- 9.3. No failure or delay by a party in exercising any right or remedy under these Terms shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 9.4. The Agency and the Client do not intend these Terms to be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.5. These terms shall be interpreted in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of these Terms. Nothing in this clause shall prevent the Agency from enforcing a judgement against the Client in any court of competent jurisdiction.

I confirm that I am duly authorised to accept these Terms on behalf of:

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Name of Client

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Date

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Name and Position

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Signed