

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

1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

"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;

"Agency" - means Certus Sales (UK) Limited (registered company no. 7900854) trading as Certus Recruitment Group of 4th Floor, 126-134 Baker St, London, W1U 6UE;

"Data Protection Laws" – means the Data Protection Act 1998 or any 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 Candidate's acceptance of the Client's offer), employment or use of the Candidate by the Client or 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, license, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Candidate is an officer or employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"Introduction" - means (i) the Client's interview of a Candidate in person or by telephone, following the Client's instruction to the Agency to search for a Candidate; or (ii) the passing to the Client of a curriculum vitae or information which identifies the 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;

"Cancellation Fee" – means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate and which is calculated in accordance with clause 5.1;

"Remuneration" - includes gross base salary or fees, guaranteed bonus 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 a company car is provided by the Client, a notional amount of £6000 will be added to the salary in order to calculate the Agency's fee;

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 of Business 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 for the supply of permanent and contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of a 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 a director of the Agency, these Terms of Business prevail over any other terms of business or purchase conditions put forward by the Client. Any agreed variation will only apply when all other terms of business are adhered to, specifically clause 3.1 (c).

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 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:

- a) to notify the Agency immediately of any offer of an Engagement which it makes to the Candidate;
- b) to 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
- c) to pay the Agency's fee within 14 days of the date of invoice.

3.2 Except in the circumstances set out in clause 5.1 below, a fee is incurred when an offer of Engagement is made to the Candidate and it is accepted by the Candidate. The Agency will render an invoice to the Client when the Candidate commences the Engagement.

3.3 The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the invoice due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.4 The fee payable to the Agency by the Client for an Introduction resulting in an Engagement is calculated as follows: for annual remuneration up to £39,999 the fees payable are 25% and for over £40,000 the fees payable are 30% subject to a minimum fee of £4,000.00. VAT will be charged on the fee if applicable.

3.5 Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.4 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.

3.6 In the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.4 will be pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Candidate within 6 calendar months from the date of termination of the first Engagement the Client shall be liable to pay a full fee calculated in accordance with clause 3.4 above.

3.7 The Introduction Fee calculated in accordance with clause 3.4 is payable if the Client Engages or re-engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction (b) the Client's withdrawal of an offer of Engagement (c) the Candidate's rejection of an offer of an Engagement or (d) the termination of the Engagement, (whichever is the later).

3.8 In the event that the Client Engages a Candidate and that Candidate is a member of the Agency's own staff or has been a member of the Agency's own staff within 6 months of the start date the fee payable will be calculated at 50% of annual remuneration. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 3.8 in any circumstances.

3.9 The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

4. REFUNDS

4.1 In order to qualify for the following refund, the Client must comply with the provisions of clause 3.1 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 10 weeks from the commencement of the Engagement (except where the Candidate is made redundant) a refund of 10% will be allowed against the Agency's fee for each complete week of the initial 10 week period not worked by the Candidate.

4.3 In circumstances where clause 3.7 applies the full fee stated in clause 3.4 is payable and there shall be no entitlement to a refund.

4.4 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 re-Engagement of this Candidate.

4.5 For the purposes of this clause 4 the date of termination of the Engagement shall be on 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

5. CANCELLATION FEE

If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency a minimum fee of 10% of the annual remuneration.

6. INTRODUCTIONS

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 in accordance with clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under the cause 4 in any circumstance.

7. SUITABILITY CHECKS

7.1 The Agency endeavours to ensure the suitability of the Candidate Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to ensure that it would not be detrimental to the interests of either Client or the Candidate; ensure that both the Client and Candidate are aware of any requirements imposed by law or any professional body and; confirm that the Candidate is willing to work in the position.

7.2 Notwithstanding clause 7.1 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: taking up any references provided by the Candidate before Engaging the Candidate; checking the Candidate's right to work and obtaining permission to work as may be required by the laws of the country in which the Candidate is Engaged to work; the arrangement of medical examination and/or investigations into the medical history of any Candidate; and satisfying any medical and other requirement, qualifications or permission required for the Candidate to work in the Engagement

7.3 To enable the Agency to comply with obligations under 7.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following: the type of work the Candidate would be required to do; the location and hours of work; the experience, training and qualifications and any authorisation which the Client considers necessary or which are required by laws or any professional body for the Candidate to possess in order to work in the position; any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks; the date the Client requires the Candidate to commence the Engagement; the durations 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 Remunerations; the length of notice the Candidate would be entitled to and receive to terminate their employment with the Client.

8. INFORMATION TO BE PROVIDED

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 7.1. 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 Candidate is being Introduced for an Engagement is the same as one in which the Candidate has worked within the previous five business days and such information has already been given to the Client.

9. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Candidate is confidential and subject to the Data Protection Laws 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 the public domain.

10. 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.

11. 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 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.

12. 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.

13. GOVERNING LAW AND JURISDICTION

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