



## TERMS OF BUSINESS

### PERMANENT & FIXED TERM CONTRACT INTRODUCTIONS

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#### 1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

- “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 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.
- “Agency”** means McGinnis Loy Limited and any of its subsidiaries or divisions as defined by the Companies Act 1985
- “Engagement”** means the engagement, employment or use of an Applicant by the Client or any third party on a permanent or contract basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Applicant is an officer or employee.
- “Introduction”** 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 information which identifies the Applicant; and which leads to an Engagement of that Applicant by a Client
- “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. 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. Where a relocation allowance is applicable and no fixed sum is payable towards the relocation, a notional amount of £8,000 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 includes the plural.
- 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** 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 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**.
- 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 In accordance with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, where the **Agency** is assisting a **Client** with a permanent or contract assignment, it shall be acting as an Employment Agency

#### 3. NOTIFICATION AND FEES

- 3.1 The **Client** agrees:
- To notify the **Agency** immediately of any offer of an **Engagement** which it makes to the **Applicant**;
  - To notify the **Agency** immediately that its offer of an **Engagement** to the **Applicant** has been accepted and to provide details of the **Remuneration** to the **Agency**; and
  - To pay the **Agency's** fee within 14 days of the date of invoice.
- 3.2 Except in the circumstances set out in clause 5.2 below, no fee is incurred by the **Client** until the **Applicant** accepts the offer of the **engagement** whether such an offer shall be conditional or not when the **Agency** will render an invoice to the **Client** for its fees.
- 3.3 The **Agency** reserves the right to charge interest on invoiced amounts unpaid for more than 14 days at the rate of 4% per annum above the base rate from time to time of HSBC Bank plc 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 in accordance with the following fee structure:

#### PERMANENT REGISTER SEARCH

Remuneration Package	Fee payable + VAT
Upto £19,999	20%
£20,000 – £29,999	22%
£30,000 - £39,999	25%
£40,000 - £49,999	28%
£50,000+	30%

#### PERMANENT RETAINED SELECTION (Total fees as above, split as follows)

Remuneration Package	Fee Payable + VAT		
	Retainer Fee	Shortlist Fee	Completion Fee
Upto £19,999	6%	6%	8%
£20,000 – £29,999	7%	7%	8%
£30,000 - £39,999	7%	8%	10%
£40,000 - £49,999	9%	9%	10%
£50,000+	10%	10%	10%

#### CONTRACT REGISTER SEARCH

Duration	Fee payable + VAT
Up to 12 months	Permanent Register Search fee, charged as above

- 3.5 All fees are expressed as a percentage of the first years gross annual **remuneration package**
- 3.6 VAT is payable on the entirety of these fees, at the prevailing rate on the date the invoice is raised
- 3.7 On a Permanent Retained Selection assignment, fees will be payable as follows – a retainer fee element immediately upon commencement of the assignment and not returnable under any circumstances; a shortlist fee element, not returnable, payable upon presentation to the **Client** of a minimum of 3 **Applicants** who in the reasonable opinion of the **Agency** meet the agreed specification; a completion fee element payable on the day an **Applicant** agrees to an **Engagement** with the **Client**. All fees shall be calculated in accordance with the Retainer fee, Shortlist Fee and Completion fee in clause 3.4 above.
- 3.8 When a **Client** engages an additional **Applicant** submitted within a shortlist on a Permanent Retained Selection assignment, a permanent fee is payable for each such additional **Applicant** in accordance with the scale of fees for a Permanent Register Search in clause 3.4 above
- 3.9 If the **Client** subsequently engages or re-engages the **Applicant** within the period of 6 calendar months from the date of termination of the **Engagement** or withdrawal of the offer, a full fee calculated in accordance with clause 3.4 above becomes payable.
- 3.10 For Contract assignments only:
- 3.10.1 The Contract fee shown in clause 3.4 above shall be due at the start of the **Engagement**
- 3.10.2 If the **Client** wishes to extend the agreed initial period of the contract then a further fee will be payable subject to the same conditions and calculated as if this was a new separate contract assignment with the exclusion of any replacement / refund as defined in clause 4
- 3.10.3 If at any time the **Client** wishes to employ the **Applicant** on a permanent basis, then in addition to the contract fees already paid, the **Client** shall pay the permanent fees in accordance with the scale of fees for a Permanent Register Search in clause 3.4 above
- 3.11 If the **Client** does not pay the **Agency** fee within 14 days of the date of invoice, and the fee agreed by the **Agency** is less than the fee structure set out in clause 3.4 above, then the fee payable will automatically revert to the fee structure as set out in clause 3.4 above. No variation or alteration shall be valid unless the details of such variation are agreed between the **Agency** and the **Client**, and the **Client** has such details agreed in writing by a director of the **Agency**.
- 3.12 If the **Agency** has agreed to extend payment terms beyond 14 days with the **Client**, and the **Client** does not pay the **Agency** fee within this extended term, and the fee agreed by the **Agency** is less than the fee structure set out in clause 3.4 above, then the fee payable will automatically revert to the fee structure as set out in clause 3.4 above. No variation or alteration shall be valid unless the details of such variation are agreed between the **Agency** and the **Client**, and the **Client** has such details agreed in writing by a director of the **Agency**.

#### 4. REFUNDS / REPLACEMENTS

- 4.1 In order to qualify for a refund, the **Client** must pay the **Agency's** fee within 14 days of the date of invoice and must notify the **Agency** in writing of the termination of the **Engagement** within 7 days of its termination.
- 4.2 Permanent Register Search - If the **Engagement** terminates before the expiry of 12 weeks from the commencement of the **Engagement** (except where the **Applicant** is made redundant), the **Agency** shall be given exclusivity by the **Client** to find a replacement at no further cost to the **Client** except for any additional advertising costs as may be agreed. If the **Agency**

is not given exclusivity by the **Client** to find a replacement and uses alternative means to find such replacement (including, but not limited to, another Recruitment Agency / Agencies, Direct or Internal Resourcing), there shall be no entitlement to a refund. If, during the period of exclusivity, and in the opinion of the **Agency**, a suitable replacement cannot be found, the **Agency** shall refund the fee to the **Client** in accordance with the bandings below :

<b>Weeks of Employment :</b>	<b>Refund of :</b>
Weeks 1 – 3	100% of Fee
Weeks 4 – 8	50% of Fee
Weeks 9 – 12	20% of Fee

- 4.3 Permanent Retained Selection - Where the **Client** instructs the **Agency** on a Retained Selection basis and if, in the opinion of the **Agency** a suitable replacement cannot be found, the **Agency** shall refund the completion fee element of the assignment only, in accordance with the bandings in clause 4.2
- 4.4 Contract Register Search – The appropriate rebate period shall be a number of weeks calculated as one week for each month of initial duration, up to a maximum period of 12 weeks. Any refund will be calculated using the same methodology as that for Permanent Register Search placements. No rebate period shall apply to any subsequent contract extension or renewal
- 4.5 In circumstances where clause 3.9 applies, the full fee stated in clause 3.4 is payable and there shall be no entitlement to a refund.

#### **5. CANCELLATION FEE**

- 5.1 If a Permanent Retained Selection Assignment is cancelled by the **Client**, or if, in the **Agency's** opinion, the **Client** for any reason materially alters its requirements submitted to the **Agency**, then, in addition to the fees payable in accordance with the scale of fees in clause 3.4, the **Client** shall pay an additional fee of 10% of the stated **Remuneration** package, plus all the agreed advertising costs and other expenses incurred by the **Agency**
- 5.2 If, after a verbal or written offer of **Engagement** has been made to the **Applicant**, the **Client** decides for any reason to withdraw it, the **Client** shall be liable to a full fee calculated in accordance with clause 3.4

#### **6. INTRODUCTIONS**

- 6.1 **Introductions** of **Applicants** are confidential, and where information is supplied by the **Agency** to the **Client** about an **Applicant**, the information must not be disclosed without the prior written consent of the **Agency** which will, where necessary, obtain the consent of the **Applicant** for any disclosure to a third party.
- 6.2 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 3.4 with no entitlement to any refund.
- 6.3 An **introduction** fee calculated in accordance with clause 3.4 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**.
- 6.4 Where the amount of the actual **Remuneration** is not known the **Agency** will charge a fee calculated in accordance with clause 3.4 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.
- 6.5 In the event that any employee of the **Agency** with whom the **Client** has had personal dealings accepts an **Engagement** with the **Client** within 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 3.4.

#### **7. SUITABILITY AND REFERENCES**

- 7.1 The **Agency** endeavours to ensure the suitability of an **Applicant** introduced to the **Client** by obtaining confirmation of the **Applicants** identity; and by a telephone and / or personal interview to discuss the **Applicants** work experience and skills. The **Agency** will also confirm that the **Applicant** is willing to work in the position which the **Client** seeks to fill.
- 7.2 It shall be the **Client's own** responsibility for taking of and verifying employment references and taking such other steps as may be required to satisfy itself as to the suitability of the **Applicant** including, but not limited to, the existence of relevant identity documentation and work permits as required by law; confirmation of educational and professional qualifications; investigations into the medical and / or criminal history of the **Applicant** including the arrangement of medical examinations for the **Applicant** .
- 7.3 Any information supplied to the **Client** by the **Agency** is supplied in good faith based on information given by the **Applicant**, and the **Agency** does not represent or warrant such information to be true. No liability whatsoever is accepted by the **Agency** in respect of the matters referred to in clause 7.1
- 7.4 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; any risks to health or safety known to the **Client** and what steps the **Client** has taken to prevent or control such risks. The **Client** also confirms that they comply with all current and relevant Health & Safety legislation. In addition the **Client** shall provide details of the date the **Client** requires the **Applicant** to commence, the duration or likely duration of the work; the minimum rate of **remuneration**, expenses and any other benefits that would be offered; the intervals of payment of **remuneration** and the length of notice that the **Applicant** would be entitled to give and receive to terminate the employment with the **Client**

#### **8. LIABILITY**

- 8.1 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 any **Introduction** to or **Engagement** of any

**Applicant** by the **Client** or from any failure of the **Agency** to introduce any **Applicant** or from any negligence, dishonesty, misconduct or lack of skill of the **Applicant**.

- 8.2 Where the **Client** instructs the **Agency** on a Contract Register Search basis, an **Applicant** provided by the **Agency** is deemed to be under the direction and control of the **Client** from the time the **Applicant** reports to take up duties and for the duration of the assignment, and the **Client** agrees to be responsible to third parties for all acts, errors and omissions be they willful, negligent or otherwise as though the **Applicant** were the direct employee of the **Client**. The **Client** will in all respects comply with all and any statutes, by-laws, codes of practice and other legal requirements to which the **Client** is ordinarily subject in respect of all the **Client's** own staff (including, but not limited to, Working Time Regulations, Health & Safety, Discrimination Laws), and will be responsible for the **Applicant's** remuneration and expenses, and deductions for PAYE and National Insurance.

**9. ADVERTISING**

- 9.1 The **Agency** is able to provide an advertising service to the **Client**, for which the charges incurred by the **Agency** are payable by the **Client**. Cancellation of an advertisement will only be accepted by the **Agency** provided that the **Client** gives sufficient notice to the **Agency** to enable the **Agency** to cancel the advertisement before going to press. The **Client** shall pay advertising accounts within 7 days of the date of invoice.
- 9.2 Except for a Permanent Retained Selection assignment, the **Agency** reserves the right to advertise the **Client** vacancy in a specific publication that it deems appropriate and/or on the internet, at its own discretion and cost, and will not be required to notify the **Client** of the advertisement, unless the **Agency** is instructed in writing by the **Client** to do so.

**10. COMPLAINTS**

- 10.1 If the **Client** has any cause for complaint about an **Applicant** or an invoice, the **Agency** must be notified as soon as possible, and this must be confirmed by the **Client** in writing to the **Agency** in any event within 7 days of the complaint arising.

**11. LAW**

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

**I accept in full the McGinnis Loy Limited Terms of Business and confirm that I am duly authorised to sign them on behalf of :**

Company Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Signed by (print name) \_\_\_\_\_  
Job Title \_\_\_\_\_  
DATE \_\_\_\_\_