

## TERMS AND CONDITIONS OF BUSINESS FOR PERMANENT STAFF RECRUITMENT

### 1. Definitions and Interpretation

1.1 In these Terms of Business, the following definitions shall apply:

<b>“Agency”</b>	means Eminence Recruitment Ltd, The Granary, rear of 234 High Street, Berkhamsted, Herts HP4 1AG
<b>“Applicant”</b>	means any 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 also any member of the Agency’s own staff providing services to the Client hereunder;
<b>“Client”</b>	means the person, firm or corporate body together with any subsidiary or associated company as defined in the Companies Act 1985 to whom the Applicant is introduced;
<b>“Engagement”</b>	means the engagement, employment or use of the Applicant directly by the Client or any third party on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Applicant is an officer or employee (“Engage” and “re-Engage” shall be construed accordingly);
<b>“Introduction”</b>	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 vitæ or information which identifies the Applicant; and which leads to an Engagement of that Applicant; or (iii) the introduction of a member of the Agency’s own staff providing services hereunder, which leads to an Engagement of that staff member Applicant.
<b>“Remuneration”</b>	includes base salary or fees

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

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

### 2. The Contract

2.1 These Terms of Business 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 of Business 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 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 signed by a duly authorised representative of both parties, and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply. It is understood and accepted by the Client that any purported variation of these Terms on a verbal basis, or in any other way which does not comply with the conditions of this Clause 2.3, shall be null and void.

### 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 Remuneration to the Agency; and
- 3.1.3 To pay the Agency’s Fee within 30 days of the date of invoice.

3.2 Except in the circumstances set out in Clause 6.1 below, no Fee is incurred by the Client until the Applicant commences the Engagement, at which point the Agency will render an invoice to the Client for its Fees.

3.3 In the event that any invoice submitted by the Company is not paid by the Client by the due date for payment set out in Clause 3.1.3 above, the Company shall immediately be entitled to levy the following charges: interest and associated charges as

prescribed by the Late Payment of Commercial Debts (Interest) Act 1998. Such late payment charges will be payable immediately by the Client on notification by the Company.

- 3.4 In addition to the late payment remedies stipulated above in Clause 3.3, any Fee discounts/reductions that have been agreed by the parties which vary from the standard rates set out in Clause 3.6 below, shall become null and void in the event of late payment and the full non-discounted rate for the placement, according to the rates shown in Clause 3.6 below, shall instead become payable by the Client.
- 3.5 All communications, interviews and offers of employment shall be made via the Agency, to whom a copy of any offer must be sent by the Client. Failure to inform the Agency that an offer has been made, or that an Applicant has commenced employment, or to provide the Agency with all details on the Applicant's remuneration package will result in an administration charge of £250 in addition to any Fee that may also be due.
- 3.6 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 on the Remuneration applicable during the first 12 months of the Engagement:

**FEE PAYABLE**

The fee payable by the client is **(to be agreed)** % of the candidate's basic salary.

- 3.7 Where the amount of the Remuneration is not known or is not disclosed by the Client, the Agency shall be entitled, acting reasonably, to calculate the Fee in accordance with Clause 3.6 based upon any or all of the following:
- 3.8.1 Information provided by the Client with regard to the target Remuneration for the Applicant;
- 3.8.1 Information provided by the Applicant with regard to his minimum Remuneration expectations;
- 3.8.2 Knowledge and experience of the Agency with regard to Remuneration for comparable roles or positions in the market generally at the time of placement.
- 3.8 VAT will be charged in addition on the Fee if applicable.
- 3.9 Where necessary and applicable, and where Remuneration is provided in Euros as opposed to Pounds Sterling, the Fee Bands state in Clause 3.6 above will be converted into Euros at the current prevailing exchange rate as stipulated by National Westminster Bank plc from time to time.
- 3.10 In the event of any Applicant being Engaged by the Client on a Fixed Term Contract ("FTC") basis, a Fee shall be chargeable according to the following formula (subject to Clause 3.7):

*(Remuneration amount x Fee percentage) x (Number of months of FTC ÷ 12)*

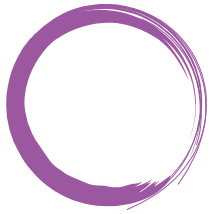
In the event that the FTC Engagement is subsequently extended, or another FTC Engagement is settled in respect of the Applicant within a period of 6 months from the date of termination of the initial FTC Engagement, then a further FTC Fee shall become payable as per the above formula, provided always that the maximum Fees payable in respect of any one particular Applicant shall be capped at a total equivalent to the appropriate Fee Percentage of one year's Remuneration.

**4. Rebates**

- 4.1 In order to qualify for the following rebate, the Client must:
- 4.1.1 Have paid the Agency's Fee within 14 days of the date of invoice; and
- 4.1.2 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 12 weeks from the commencement of the Engagement (except where the Applicant dies or is made redundant by the Client), a partial rebate of the Introduction Fee shall be refunded by the Agency to the Client in accordance with the scale set out below, provided that the Client has complied with the conditions set out in Clause 4.1 above:

Period of Engagement	Rebate % Fee
Week 1	100%
Week 2	87.5%
Week 3	75%
Week 4	62.5%
Week 5	50%
Week 6	37.5%
Week 7	25%
Week 8	12.5%

- 4.3 No rebates are payable in respect of FTC Engagements made under Clause 3.10.



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## **5. Cancellation Fee**

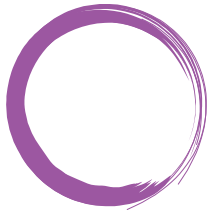
- 5.1 Should the Client or any subsidiary or associated company of the Client subsequently Engage or re-Engage the Applicant within the period of 6 calendar months from the date of termination of the Engagement or withdrawal of any offer of Engagement, a full Fee calculated in accordance with Clause 3.6 above becomes payable, with no entitlement to any refund.

## **6. 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 with no entitlement to any refund.
- 6.2 An Introduction Fee calculated in accordance with Clause 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 In the event that the Agency is requested to arrange any interview with an Applicant, either verbally, electronically or in writing, then the Agency will be deemed to have made an Introduction regardless of any other circumstances.
- 6.4 The fact that the Client may have previously been aware of the Applicant will not invalidate the Introduction of the Applicant to the Client by the Agency, regardless of the opinion of the Applicant.
- 6.5 In the event that any employee of the Agency, with whom the Client has had personal or business dealings, accepts an Engagement with the Client within 6 months of leaving the Agency's employment, the Client shall be liable to pay a Fee to the Agency calculated in accordance with Clause 3.

## **7. Suitability and 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 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.



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## **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 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.

## **9. Miscellaneous**

9.1 The Agency confirms that it provides services hereunder in its capacity as an employment agency, in the context of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

9.2 Neither party shall, without the prior written consent of the other, assign, sub-contract or transfer its rights and obligations under these Terms of Business save that the Company shall be entitled to assign its rights and obligations under these Terms of Business to any of its subsidiary companies within the Eminence Group, or to any purchaser of the whole or a substantial part of its business.

9.3 If any provision or term of these Terms of Business shall become or be declared illegal, invalid or unenforceable for any reason, including but not limited to by reason of the provisions of any legislation or other provisions having the force of law or by reason of any Court or other body or authority having jurisdiction over the parties to these Terms of Business, but such provision or term would be held to be valid if part of the wording were either amended or deleted, then such provision shall apply with such deletions/amendments as may be necessary to make it valid. Any provision or term shall not be made valid in such way shall be divisible from these Terms of Business, and shall be deemed to be deleted from these Terms of Business, provided always that if any such deletion substantially affects or alters the commercial basis of these Terms of Business then the parties shall negotiate in good faith to amend or modify the provisions and terms of these Terms of Business as necessary or desirable in the circumstances.

9.4 Should either party fail or delay to exercise any right or remedy, or part of a right or remedy under these Terms of Business, it will not waive that right or remedy or the further exercise of that right or remedy, or the exercise of any other right or remedy, against the other party.

9.5 Both parties agree that none of these Terms of Business shall be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999, and these Terms of Business can be rescinded or varied by agreement between the parties without the consent of any such third party. For the purposes of this clause a third party means any person who is not party to this contract.

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