

Terms and Conditions of Business for the Introduction of Permanent Staff

1. Definitions & Interpretation

- 1.1. In these Terms & Conditions (Terms), the following definitions apply:
- “Candidate” means the person Introduced by Brackenridge to the Client for an Engagement, including any employee or officer of the Candidate if the Candidate is a limited company;
- “Client” means the corporate body, firm or person to whom a Candidate is Introduced by Brackenridge, including any holding, associated or subsidiary company of the Client;
- “Conduct Regulations” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);
- “Data” means personal data and special/sensitive personal data within the meaning of the Data Protection Legislation;
- “Data Protection Legislation” means (i) the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;
- “Engagement” means the employment, appointment or use of the Candidate by the Client or any third party to whom the Candidate has been introduced by the Client, on any basis whatsoever, whether permanent, temporary or fixed term and whether directly or indirectly (Engage, Engages and Engaged shall be construed accordingly);
- “Brackenridge” means Brackenridge Recruitment Limited, registered in England and Wales with company number 12235896 and with its registered office at 29 Carlton Crescent, Southampton, SO15 2EW, United Kingdom;
- “Introduction” means the introduction of the Candidate to the Client by Brackenridge as referred to in Clause 4 (Introduce and Introduces shall be construed accordingly);
- “Introduction Period” means 12 calendar months from the date of a Candidate’s most recent Introduction;
- “Payment Terms” means 30 days from the date of Brackenridge’s invoice;
- “Refund Period” means 12 weeks from commencement of the Engagement;
- “Remuneration” means the estimated annual gross basic salary or fees, guaranteed bonus and commission earnings, overseas allowances and/or uplifts, other allowances, subsistence, joining payments, and all other payments and emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client. For the purpose of calculating the Introduction Fee, £5,000 shall be added in respect of a company vehicle and £5,000 shall be added in respect of any company accommodation which is provided to the Candidate;
- “Special Conditions” means any additional terms and conditions agreed in writing between Brackenridge and the Client which are supplemental to these Terms; and
- “Working Days” means any week day, other than a bank or public holiday in England.

- 1.2. Unless the context requires otherwise, references to the singular include the plural, the masculine include the feminine, a person includes both a legal person and a natural person, and vice versa.
- 1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

2. The Agreement

- 2.1. These Terms shall be deemed to be accepted upon the Client (i) instructing Brackenridge, whether verbally or in writing, to Introduce Candidates (ii) interviewing or Engaging a Candidate following an Introduction (iii) passing a Candidate’s details to any third party following an Introduction by Brackenridge or (iv) signing these Terms to indicate acceptance, whichever occurs first.
- 2.2. No variation to these Terms shall be valid unless agreed between a director of Brackenridge and the Client and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply, signed by a Director.
- 2.3. The Client shall not rely on any statement, promise or representation made or given by or on behalf of Brackenridge which is not set out in these Terms or the Special Conditions.
- 2.4. These Terms, together with any Special Conditions, comprise the entire agreement between the parties to the exclusion of all other terms and conditions, and supersede any terms previously agreed between the parties.
- 2.5. In the event of a conflict between these Terms and the Special Conditions, the Special Conditions shall take priority.

2.6. Brackenridge shall act as an intermediary between the Candidate and the Client and does not have any authority to bind the Candidate or the Client contractually.

2.7. For the purposes of the Conduct Regulations, Brackenridge shall act as an employment agency when providing services pursuant to these Terms.

3. Obligations

- 3.1. The Client shall provide to Brackenridge all such information as Brackenridge shall require regarding the vacancy which the Client is seeking to fill including, without limitation, all information specified in Regulation 18 of the Conduct Regulations.
- 3.2. The Client consents to Brackenridge advertising each vacancy unless the Client specifies otherwise in writing.
- 3.3. Brackenridge shall endeavour to ensure the suitability of any Candidate Introduced to the Client by taking reasonably practicable steps to:
- 3.3.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the relevant vacancy;
- 3.3.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body for the Candidate to work in the relevant vacancy; and
- 3.3.3. confirm that the Candidate is willing to work in the relevant vacancy.
- 3.4. Notwithstanding Clause 3.3, the Client shall take all appropriate steps to ensure the suitability of the Candidate for the vacancy they are seeking to fill by:
- 3.4.1. obtaining references for the Candidate;
- 3.4.2. conducting such background checks on the Candidate as the Client deems appropriate;
- 3.4.3. checking the Candidate’s right to work in the relevant jurisdiction and, if necessary, arranging any work permit which may be required for the Candidate to work in such jurisdiction;
- 3.4.4. arranging any medical examinations, fitness tests and enquiries into the medical history of the Candidate; and
- 3.4.5. checking any other qualifications, certifications, professional memberships or permissions necessary for the Candidate to be Engaged by the Client.
- 3.5. The Client shall arrange and pay for, without limitation, all air fares, taxes and surcharges and all charges for visas, work permits, residence permits, medical certificates, health and fitness tests and any other documentation required for the Candidate to undertake the Engagement.
- 3.6. The Client and Brackenridge each warrant that they:
- 3.6.1. shall comply with all applicable laws, statutes, regulations, and codes relating to bribery and corruption including but not limited to the Bribery Act 2010; and
- 3.6.2. shall promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms.

4. Introductions

- 4.1. The Introduction of a Candidate to a Client shall occur when Brackenridge:
- 4.1.1. provides a curriculum vitae, contact information or other information to the Client which expressly or impliedly identifies a Candidate with a view to arranging an Engagement;
- 4.1.2. arranges an interview or meeting between the Client and the Candidate whether in person, by telephone, web-conference or otherwise; or
- 4.1.3. introduces any third party to the Client directly or indirectly with a view to the Engagement of such third party by the Client.
- 4.2. The Client shall be liable to pay an Introduction Fee to Brackenridge upon the Candidate accepting an offer of Engagement during the Introduction Period.
- 4.3. Irrespective of whether the Candidate was previously known to the Client or not, Brackenridge shall be deemed to be the effective cause of any Engagement of the Candidate during the Introduction Period unless, within 2 Working Days of Brackenridge first Introducing the Candidate, the Client:

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- 4.3.1. notifies Brackenridge that the Client had already been in contact with the Candidate in respect of the specific vacancy within the six month period prior to Brackenridge's Introduction; and
- 4.3.2. provides substantive evidence of such prior contact to Brackenridge's reasonable satisfaction.
- 4.4. If the Client discloses a Candidate's details to any third party, resulting in the Candidate accepting an offer of Engagement from such third party within the Introduction Period, the Client shall be liable to pay an Introduction Fee to Brackenridge.
- 4.5. The Client shall notify Brackenridge in writing and without delay when an offer of Engagement is made to a Candidate and when such offer of Engagement is accepted by the Candidate, providing full details of the agreed Remuneration.
- 5. Fees**
- 5.1. The Introduction Fee payable by the Client upon the Engagement of a Candidate shall be a sum equivalent to 25% of the Candidate's Remuneration;
- 5.2. Brackenridge will issue an invoice to the Client:
- 5.2.1. for the Introduction Fee upon commencement of the Engagement; and
- 5.2.2. for any agreed costs, expenses or disbursements (Costs) immediately upon incurring such Costs.
- 5.3. Where applicable, Brackenridge shall apply VAT at the standard rate to all invoices.
- 5.4. The Client shall pay all invoices issued by Brackenridge by electronic funds transfer, without deduction or set off, within the Payment Terms. Time for payment shall be of the essence.
- 5.5. Any discount from Brackenridge's standard Introduction Fee as specified in clause 5.1 shall be conditional upon the Client (i) complying with clause 4.5 and (ii) paying Brackenridge's invoice within the Payment Terms.
- 5.6. If an invoice remains unpaid beyond the Payment Terms, Brackenridge may:
- 5.6.1. immediately demand payment of all outstanding invoices;
- 5.6.2. issue an additional invoice to the Client pursuant to clause 5.5;
- 5.6.3. charge late payment compensation on such invoice pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;
- 5.6.4. charge interest on such invoice 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
- 5.6.5. 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 Brackenridge in recovering payment from the Client.
- 5.7. Where the actual Remuneration is not known to Brackenridge, the Introduction Fee shall be calculated in accordance with clause 5.1 based upon on the remuneration which Brackenridge reasonably considers to be the market rate for the vacancy in which the Candidate has been Engaged.
- 5.8. If the Client withdraws an offer of Engagement for any reason unrelated to the Candidate's suitability, the Client shall be liable to pay Brackenridge a cancellation fee equivalent to 25% of the Introduction Fee.
- 5.9. Brackenridge may require the Client to make a payment on account before providing services pursuant to these Terms. Such payment shall be a sum agreed between the Client and Brackenridge and must be paid by the Client into Brackenridge's nominated bank account.
- 5.10. The Introduction Fee shall be charged to the Client in Pounds Sterling (GBP). Where a Candidate's Remuneration is not provided in GBP, Brackenridge shall convert the Remuneration to GBP using the exchange rate published by HSBC Bank on the date of Brackenridge's invoice and Client shall bear all banking and currency exchange charges when paying Brackenridge's invoice.
- 6. Refund Guarantee**
- 6.1. If the Engagement terminates with the Refund Period, the Introduction Fee shall be refunded to the Client in accordance with clause 6.2 provided that:
- 6.1.1. the Client paid the Introduction Fee within the Payment Terms;
- 6.1.2. the Client notifies Brackenridge in writing within 7 days of the Engagement terminating, giving the reasons for such termination;
- 6.1.3. the Engagement was not terminated for redundancy or for reasons which are automatically unfair;
- 6.1.4. the Candidate had not been Engaged by a third party pursuant to clause 4.4; and
- 6.1.5. the agreed Introduction Fee for the Engagement was calculated in accordance with clause 5.1 and not subject to any discount or reduction.
- 6.2. Subject to Clause 6.1, the Introduction Fee shall be refunded to the Client in accordance with the following scale:
- | Termination of Engagement: | % Refund |
|----------------------------|----------|
| 1 – 4 Weeks | 100% |
| 5 – 8 Weeks | 50% |
| 9 – 12 weeks | 25% |
- 6.3. For the purposes of calculating the refund, the Engagement shall be deemed to have terminated on the date on which the Candidate's employment with the Client ends or would have ended but for any payment which the Client makes in lieu of notice, whichever is later.
- 6.4. If the Client re-engages the Candidate within 12 months from the date of termination of Engagement, the Client must notify Brackenridge without delay, the full Introduction Fee shall be payable by the Client and the Refund Guarantee shall not then apply.
- 7. Confidentiality & Data Privacy**
- 7.1. The Client shall treat all information relating to a Candidate which is provided during the recruitment process as confidential and:
- 7.1.1. Must not use such information for any other purpose without the prior consent of Brackenridge and the Candidate; and
- 7.1.2. Must ensure that its employees, representatives and agents are all bound by written confidentiality obligations in respect of such information.
- 7.2. The Client acknowledges that, unless otherwise agreed between the parties in writing, Brackenridge and the Client shall each act as data controllers in respect of any Data relating to a Candidate and shall control and process all such Data in accordance with the Data Protection Legislation.
- 7.3. The Client must provide to the Candidate the information specified under Article 14 of the GDPR and, if requested by the Client, Brackenridge shall use reasonable endeavours to assist the Client in this regard.
- 7.4. The Client must not apply for a reference from the Candidate's current employer prior to the Candidate formally accepting an offer of Engagement.
- 8. Liability**
- 8.1. Whilst Brackenridge will use reasonable endeavours to ensure that any Candidate Introduced to the Client meets the requirements specified by the Client, Brackenridge gives no warranty, whether express or implied, as to the ability, integrity or character of the Candidate.
- 8.2. Brackenridge shall not be liable to the Client for any indirect or consequential losses or for any loss of profit, loss of business, loss of anticipated savings or loss of reputation howsoever arising.
- 8.3. Subject to clause 8.4, the aggregate liability of Brackenridge to the Client in respect of any claim 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 Brackenridge for the Engagement in relation to which such claim arises or, if there was no Engagement or if the claim does not relate to an Engagement, the sum of £2,500.
- 8.4. Brackenridge does not limit or exclude liability for death or personal injury arising from its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.
- 8.5. Any claim which the Client may bring against Brackenridge pursuant to 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 Brackenridge against all losses, damages or claims suffered or incurred by Brackenridge as a result of the Client's breach of contract, negligence (or any other tortious act), breach of statutory duty or otherwise.
- 9. General**

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- 9.1. Any failure by Brackenridge to insist upon strict performance of these Terms shall not be deemed a waiver of any of Brackenridge's rights or remedies nor be deemed a waiver of any subsequent default by the Client.
- 9.2. If any part of these Terms is determined to be unenforceable to any extent, such part shall, to that extent, be severed from these Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.
- 9.3. The Client shall not assign any of its rights or obligations under these Terms without the written consent of Brackenridge, such consent to be granted at Brackenridge's entire discretion.
- 9.4. Brackenridge and the Client do not intend these Terms to be enforceable by any third party.
- 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.

Signature:

Name:
Date Signed:
Signed on Behalf of Brackenridge Recruitment Ltd

Signature:

Name:
Date Signed:
Signed on Behalf of The Client