

JJ CONSTRUCTION RECRUITMENT

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR CONTRACT STAFF (WITH EXCLUSIVITY)

1. DEFINITIONS

1.1. In these Terms the following definitions apply:

- “Agency”** means JJ Construction Recruitment Limited (registered company no. 14334784 of 575-599 Maxted Road, Hemel Hempstead Industrial Estate, Hemel Hempstead, England, HP2 7DX;
- “Client”** means the person, firm or corporate body together with any subsidiary or associated company, firm or corporate body to which the Candidate is Introduced;
- “Candidate”** means any third party introduced by the Agency to the Client; 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;
- “End Date”** means [insert date] being the date the Exclusivity Period ends;
- “Engagement”** means the engagement, employment or use of the Candidate by the Client or by 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, licence, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Candidate is an officer, employee or other representative;
- “Exclusivity Period”** means, where the Agency has been engaged on an exclusive basis, the period starting on the Start Date and during which these Terms shall remain in force;
- "Extension"** means an extension of a Fixed Term Contract;
- "Fixed Term Contract"** means a contract of fixed duration;
- “Introduction”** means (a) the passing to the Client of a Candidate’s Curriculum Vitæ, any other information which identifies the Candidate, (b) the passing of information about the Client to a Candidate or (c) the Client’s interview of a Candidate (in person, by telephone or by any other means); and which leads to an Engagement of the Candidate;
- “Introduction Fee”** means the fee (calculated as set out in Schedule 1) which is payable to the Agency for an Introduction resulting in an Engagement;

- “Minimum Fee”** means as set out in the Schedule;
- “Remuneration”** includes gross base salary or fees, payable to or receivable by the Candidate for services rendered to or on behalf of the Client;
- “Replacement Candidate”** means any Candidate the Agency Introduces to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not start or was terminated during the first 12 weeks of the Engagement;
- “Start Date”** means [insert date] being, where the Agency has been engaged on an exclusive basis, the date the Exclusivity Period starts and for the avoidance of doubt all the provisions of these Terms shall be deemed to become effective at this date;
- “Termination Date”** means the date the Candidate’s Engagement ends or would have ended had they not received payment in lieu of notice.

- 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.

2. THE CONTRACT

- 2.1. These terms of business and the attached Schedule (these Terms) constitute the entire agreement between the Agency and the Client and prevail over any other terms of business or purchase conditions put forward by the Client. The Client agrees and acknowledges that it accepts these terms if it asks the Agency to Introduce Candidates to it or Engages any Candidate Introduced by the Agency or passes any information about a Candidate to any third party following an Introduction. If the Agency is not on the Client’s preferred or approved supplier lists of agencies the Client should not ask the Agency to Introduce Candidates unless the Client accepts these Terms.
- 2.2. 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 with a copy given to the Client stating the date on which the revised terms of business shall apply.

Exclusivity Period

- 2.3. Where the Agency has been engaged on an exclusive basis, clauses 2.4 to 2.9 inclusive will apply.
- 2.4. The Agency agrees to Introduce Candidates to the Client for Engagement directly by the Client for the duration of the Exclusivity Period.

- 2.5. The Client agrees that during the Exclusivity Period it will exclusively use the Agency's services for the Introduction of permanent or fixed term contract staff. The Client will not use the services of any other employment agency, directly or indirectly, except where the Agency has searched for Candidates but is unable to Introduce suitable Candidates for Engagement, or in the circumstances set out in clause 2.6.
- 2.6. Nothing in these Terms shall prevent the Client from:
- 2.6.1. responding to unsolicited approaches from third party agencies by referring that agency to the to serve as a sub-contractor or consultant to the Agency;
 - 2.6.2. responding to unsolicited approaches from work-seekers directly;
 - 2.6.3. directly approaching work-seekers using its own resources.
- 2.7. Subject to the provisions for earlier termination set out in clause 2.9 below, the Exclusivity Period shall terminate by either party giving the other 3 months' written notice.
- 2.8. Either party may immediately terminate the Exclusivity Period by notice to the other if the other:
- 2.8.1. commits a breach of these Terms which in the case of a breach capable of remedy shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy; or
 - 2.8.2. is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the party resulting from such reconstruction or amalgamation if a different legal entity shall agree to have the contract assigned to it and to take on all liabilities and obligations thereunder whether actual or contingent).
- 2.9. For the avoidance of doubt if either party terminates the Exclusivity Period, the Client remains obligated to pay any fees owed to the Agency in accordance with the Terms, irrespective of whether these fees relate to an Introduction made before or after the Exclusivity Period is terminated.

3. **NOTIFICATION AND FEES**

- 3.1. The Agency may provide its services on a one-off introduction fee basis or on a fixed term contract basis. However the Agency is engaged, the Client agrees:
- 3.1.1. to tell the Agency immediately if it already knows a Candidate Introduced by the Agency, whether because that Candidate applied directly to the Client, or was introduced by another agency, or through LinkedIn or a jobs board or by a third party and shall give written evidence of such prior knowledge. The parties will agree whether the Agency will continue to represent the Candidate. The

Client agrees that if it continues to instruct the Agency regarding that Candidate then it accepts that the Agency has Introduced the Candidate and shall be liable to pay the relevant fee if it Engages the Candidate;

- 3.1.2. to notify the Agency immediately of any offer of an Engagement which it makes to the Candidate;
- 3.1.3. to notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration agreed with the Candidate;
- 3.1.4. to pay the Agency's Introduction Fee within 30 days of the date of invoice.
- 3.2. The Client must pay an Introduction Fee if the Client Engages or re-Engages the Candidate within a period of 12 calendar months from (a) the date of an Introduction or (b) the Engagement's Termination Date or (c) the withdrawal of the offer. The Introduction Fee is calculated as set out in the Schedule and is based on the Remuneration applicable during the first 12 months of the Engagement and is subject always to the Minimum Fee. VAT will be charged on the Introduction Fee if applicable.
- 3.3. If the Engagement is a Fixed Term Contract for a period of less than 12 months, the Introduction Fee will apply pro-rata (subject always to the Minimum Fee). If the Client extends the Engagement beyond the initial fixed term or re-Engages the Candidate within 12 calendar months from the Termination Date of the initial Fixed Term Contract, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for the Extension or the period of the second and any subsequent Engagement.
- 3.4. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts Act 1998 on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 3.5. Without prejudice to the above provisions, if the Client does not pay the Introduction Fee by the due date, all Fees and any other charges incurred by the Client become immediately due to the Agency as a debt.

Cancellation Fee

- 3.6. If, after the Client makes an offer of Engagement to the Candidate, the Client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee to be calculated as set out in the Schedule.

The Agency's own staff

- 3.7. If any of the Agency's staff with whom the Client has had personal dealings accept an Engagement with the Client while employed by the Agency, or within 3 months of leaving the Agency name, the Client shall be liable to pay the Agency a fee equivalent to the Introduction Fee calculated in accordance

with clause 3.2. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 3.7 in any circumstances.

4. REFUNDS

- 4.1. If the Engagement terminates before the expiry of 12 weeks the Agency will refund the Introduction Fee in accordance with the Scale of Rebates set out in the Schedule 1.
- 4.2. In order to qualify for the refund set out in clause 4.1:
 - 4.2.1. the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the non- commencement of the Engagement within 7 days of its termination or non-commencement; and
 - 4.2.2. the Client must exclusively give the Agency name 4 weeks from the date of the notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client wants to fill. If after 4 weeks from the date of the Client's notice the Agency cannot find a suitable Replacement Candidate (suitability being at the sole discretion of the Agency), or if the Replacement Candidate's Engagement is terminated before the expiry of 12 weeks from the start date of the Engagement, the Client will then be eligible for a refund, subject to the rest of clause 4;
 - 4.2.3. the Client must have paid the Agency's invoice for the Introduction Fee within the payment terms in accordance with clause 3;
 - 4.2.4. the Client has not terminated the Candidate's because of redundancy or re- organisation or change in strategy;
 - 4.2.5. the Candidate's Engagement is not terminated by reason of poor performance prior to the completion of any induction or training period;
 - 4.2.6. if the Candidate's Engagement is terminated by reason of misconduct, refund is only due where such misconduct was reasonably foreseeable by the Agency;
 - 4.2.7. the Candidate did not leave the Engagement because they reasonably believed that the nature of the actual work was substantially different from the information the Client gave before the Candidate accepted the Engagement;
 - 4.2.8. the Candidate did not leave the Engagement as a result of a breach of the Equality Laws by the Client or its staff or any other acts against the Candidate; or
 - 4.2.9. the Candidate was not at any time in the 12 months before the start of the Engagement, employed or hired (whether on a permanent or contract basis, directly or indirectly) by the Client.

- 4.3. For the avoidance of doubt, the Client shall not be entitled to a refund in any circumstances, where the Client Engaged the Candidate on a Fixed Term Contract.
- 4.4. If having received a refund, the Client re-Engages the Candidate within a period of 12 calendar months from the date of termination, then the full 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.

5. THIRD PARTY INTRODUCTIONS

- 5.1. Introductions of Candidates are confidential. The disclosure of a Candidate's details to a third party will be deemed to be a Third Party Introduction.
- 5.2. If the Third Party Introduction results in an Engagement of the Candidate by the third party within 12 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.
- 5.3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee payable in respect of a Third Party Introduction in any circumstances.

6. SUITABILITY CHECKS

- 6.1. The Agency tries to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
 - 6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
 - 6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
 - 6.1.3. ensure that it would not be detrimental to the interests of either the Client or the Candidate; ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
 - 6.1.4. ensure that it would not be detrimental to the interests of either the Client or the Candidate; ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body.
- 6.2. Notwithstanding clause **Error! Reference source not found.** the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
 - 6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;

- 6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
 - 6.2.3. checking any medical requirement and arranging any examinations and/or investigations into the medical history of any Candidate; and
 - 6.2.4. checking any other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3. So that the Agency can comply with its obligations under clause **Error! Reference source not found.** above, the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
 - 6.3.1. the type of work that the Candidate would be required to do;
 - 6.3.2. the location and hours of work;
 - 6.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
 - 6.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 6.3.5. the date the Client requires the Candidate to commence the Engagement;
 - 6.3.6. the duration or likely duration of the Engagement;
 - 6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
 - 6.3.8. the intervals of payment of Remuneration; and
 - 6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 6.4. The Client authorises the Agency to advertise the availability of the position which the Client engages the Agency to seek to fill.
- 6.5. The Client will not at any time give instructions to the Agency which might cause the Agency to breach the Equality Laws.

7. **CONFIDENTIALITY AND DATA PROTECTION**

- 7.1. All information relating to a Candidate is confidential and subject to the Data Protection Act 2018 and all other statutory provisions relating to the protection of personal data ("Data Protection Legislation"). Personal data (as defined in the Data Protection Legislation) is provided solely for the purpose of providing work-finding services to the Client. Such personal data 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 Data Protection Legislation in receiving and processing the data at all times.

- 7.2. 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 in the public domain.

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 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.

9. NOTICES

All notices which are required to be given in accordance with these Terms 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 party in writing (which includes by email). 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, when that email is sent (unless sent outside normal business hours in which case it will be deemed to be delivered the next working day).

10. 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.

11. THIRD PARTY RIGHTS

None of the provisions of these Terms are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

12. GOVERNING LAW AND JURISDICTION

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

SCHEDULE 1

Any changes to standard Terms of Business will be highlighted here:

Introduction Fee - Permanent and Fixed Term Contract Staff	
Base Salary only	15%

- *The Fee is based per Candidate Introduced to the Client or Third Party by the Agency.*
- *Introduction Fees for fixed term contract staff will be calculated at the above rate and adjusted pro rata for the contract period.*
- *All fees are subject to VAT, where applicable.*
- *The Minimum Fee is GBP 2500.00 plus VAT.*

The Cancellation Fee (payable under clause 3.10) will be charged at 50% of the Introduction Fee which would have been due had the Engagement occurred.

Rebate Scales	
Weeks completed in the Engagement	Refund rate
1-4 Weeks	100%
5-8 Weeks	50%
9-12 Weeks	10%
13 weeks plus	No refund

- *Should the applicant leave during the first 12 weeks of the engagement, a partial refund of the introduction fee shall be paid to the client in accordance with the scale set out above, subject to the conditions set out in Clause 4.*

[Signed for and on behalf of the Client]

[Signed for and on behalf of the Agency]

[Print name here]

[Print name here]

[Date]

[Date]

By signing the agreement, you confirm that you are authorised to sign these Terms for and on behalf of the Client.