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**EMPLOYMENT AGENCY TERMS AND CONDITIONS**


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**BACKGROUND:**

These Terms and Conditions shall apply to the provision of Services by the Agency to the Client.

In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Client or otherwise), the former shall prevail unless expressly otherwise agreed by the Agency in writing.

**1. Definitions and Interpretation**

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agency”</b>	means Montgomery Watt Ltd a company registered in England under number 8225785 whose registered office is 20-22 Wenlock Road, London. N1 7GU;
<b>“Candidate”</b>	means any person introduced by the Agency to the Client for an Engagement;
<b>“Client”</b>	means any person, firm or company including any associates or subsidiaries to whom a Candidate is introduced;
<b>“Confidential Information”</b>	means any information concerning either Party and relating to its business methods, plans, systems, finances or projects; its trade secrets; its products or services; or any other information which is expressly described as confidential;
<b>“Engagement”</b>	means any employment, engagement or use by a Client of a Candidate whether part or full time, with or without a contract;
<b>“Introduction”</b>	an introduction will be deemed to have taken place where the Agency has provided a Client with any information concerning a Candidate, or where a Client interviews a Candidate following an instruction from the Client to locate a Candidate;
<b>“Introduction Fee”</b>	means the fee payable by the Client to the Agency in accordance with these Terms and Conditions, on the introduction of a Candidate to a Client which results in the Engagement of a Candidate;
<b>“Remuneration”</b>	means any salary, fees, bonuses, commission, allowances, or any other financial benefit payable to, or received by a Candidate for services to a Client
<b>“Services”</b>	means the employment agency services provided by the Agency to the Client as set out in these Terms and Conditions.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Schedule is a schedule to these Terms and Conditions; and
  - 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
  - 1.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

## 2. **The Contract**

- 2.1 Any and all business entered into by the Agency is subject to these Terms and Conditions and in the event of any conflict with any other Terms and Conditions these terms shall prevail unless agreed otherwise in writing by Duncan Watt or Claire Watt, Directors of the Agency.
- 2.2 No modification or change to these Terms and Conditions will be valid unless the details of any such changes are in writing, signed on behalf of the Agency and the Client, and state the date on or after which such new terms will apply.
- 2.3 In the event that any part(s) of these Terms and Conditions or part thereof is declared to be invalid, unlawful, void or unenforceable then such terms or parts shall be severed and the remaining terms and conditions shall continue to be valid and enforceable to the fullest extent of the law.
- 2.4 The Engagement or interviewing of a Candidate, by or on behalf of the Client, or the commencement of work or provision of services by a Candidate for the Client shall be deemed acceptance of these Terms and Conditions.
- 2.5 These Terms and Conditions supersede all previous terms of business.

## 3. **Vacancies and Advertisements**

- 3.1 The Agency shall have the right to decline, cancel or otherwise remove any vacancy advertisement provided by the Client to the Agency at any time, for any reason and without giving prior notice to the Client.
- 3.2 If any vacancy advertisement appears to demonstrate that the Client intends to discriminate on the grounds of gender, sexual orientation, race, religion or age, it will be declined unless the vacancy is exempted from the provisions of the Sex Discrimination Act 1975; the Employment Equality (Sexual Orientation) Regulations 2003; the Race Relations Act 1976; the Employment Equality (Religion and Belief) Regulations 2003; or the Employment Equality (Age) Regulations 2006. In the case of any applicable exemptions, the vacancy advertisement must be accompanied by a written statement explaining those exemptions and how they apply to the vacancy.

- 3.3 If, in the opinion of the Agency, any vacancy advertisement indicates any illegal purposes on the part of the Client, the Agency may, without notice, report the vacancy and the Client to the relevant authorities. Such authorities may include, but are not limited to, the Department for Work and Pensions, ACAS, the Information Commissioner's Office; and the Recruitment and Employment Confederation.
- 3.4 Vacancy advertisements shall remain open and viewable by prospective Candidates for a period of 4 weeks or otherwise as agreed between the Agency and the Client.
- 3.5 All vacancy advertisements shall contain details of no more than one single vacancy unless otherwise agreed in writing between the Agency and the Client.

#### 4. **The Agency's Obligations**

- 4.1 The Agency shall use its best and reasonable endeavours to find suitable and willing Candidates to fill such vacancies as are notified to the Agency by the Client.
- 4.2 The Agency will endeavour to ensure that all Candidates introduced to the Client have the experience, qualifications, and authorisations which are required by the Client, by law or by any professional body, for the position(s) that the Client wishes to fill, and will also endeavour to verify the identity of Candidates prior to introducing them to the Client.
- 4.3 At the same time as proposing a Candidate to the Client the Agency will inform the Client of such matters as detailed in sub-Clause 4.2 that the Agency has obtained confirmation of.
- 4.4 The Agency will endeavour to take all reasonable steps to ensure that Clients and Candidates are aware of any requirements imposed by law or any professional body on the vacancy / vacancies that the Client seeks to fill.
- 4.5 The Agency cannot guarantee to find a suitable Candidate for each vacancy and gives no warranties as to the suitability of any Candidate.
- 4.6 Where a Candidate is offered or applying for Engagements that involve working with or caring for any persons under the age of 18, the elderly, the infirm or anyone in need of care and attention, the Agency will take all reasonably practical steps to ensure that it obtains and makes available to Clients copies of all necessary authorisations required for the Engagement, two references from persons unrelated to the Candidate, and confirmation that the Candidate is not unsuitable to work with vulnerable people.

#### 5. **The Client's Obligations**

- 5.1 The Client shall provide to the Agency all information which is reasonably required for the Agency to provide the Services. The Client shall use its best and reasonable endeavours to ensure that such information is complete, accurate and up-to-date.
- 5.2 The Client shall ensure that all information provided to the Agency does not contain any material which could be regarded as offensive, indecent, obscene, illegal, dishonest, untruthful, defamatory or discriminatory.
- 5.3 The Client shall ensure that all information provided to the Agency does not contain any material which infringes the rights of any third parties (including, but not limited to, intellectual property rights).
- 5.4 The Client must provide the Agency with details of the vacancies that the Client wishes to fill, which must include the type of work required, the date of commencement, the duration, the hours, rates of pay and location as well as the training, qualifications and other authorisations required by law, the Client and any professional body for the position(s).
- 5.5 The Client must inform the Agency of any Health and Safety risks or requirements of the vacancies the Client wishes to fill, as well as the action taken by the Client to minimise and control such risks.

- 5.6 The Client must not seek to employ any member of the Agency's staff, but in the event that any member of staff accepts an Engagement with the Client, the Client must pay an Introduction Fee in accordance with Clause 6.
- 5.7 If the Client, within 6 (six) months from the date of Introduction by the Agency, Employs a Candidate or Employs a Candidate after rejecting that Candidate or the Client subsequently Employs a Candidate after the Candidate initially rejects an offer made by the Client, the Client agrees to pay the Fees as detailed in **6.1**
- 5.8 If the Client, within 6 (six) months from the date of Introduction by the Agency, Employs a Candidate for another, different vacancy the Client agrees to pay the Fees as detailed in **6.1**
- 5.9 The Client acknowledges that the Agency is under no obligation to provide the Services until all required information has been provided by the Client in accordance with sub-Clause 5.1.
- 5.10 The Client shall inform the Agency immediately in the event that any relevant information changes following the submission of that information to the Agency. The Agency reserves the right to charge the Client at the rate of £100/hr for any work required to make alterations to vacancy advertisements or other relevant information it holds.
- 5.11 Subject to the provisions of sub-Clauses 4.2 and 4.6, the Agency shall not verify or otherwise check any Candidate details, howsoever they may be provided to the Client.
- 5.12 It shall be the sole responsibility of the Client to ensure that Candidates are suitable for the relevant vacancies and to obtain any references required.
- 5.13 It shall be the sole responsibility of the Client to obtain any required permits (including, but not limited to, work Permits).
- 5.14 It shall be the sole responsibility of the Client to arrange for any required medical examinations or investigations.
- 5.15 The Client must notify the Agency immediately of any offer of an Engagement that it makes to a Candidate.
- 5.16 The Client must notify the Agency immediately of the acceptance of any offer of Engagement that is made to a Candidate and provide details of the Candidate's remuneration.
- 5.17 The Client must notify the Agency immediately if, following the Engagement of a Candidate, the Candidate's remuneration increases at any time during the first 12 months of the Engagement, and the introduction fee detailed in clause will be increased accordingly.
- 5.18 The Client must within 7 days of offering an Engagement to a Candidate provide the Agency with a copy of the job offer or contract given to the Candidate.
- 5.19 Notwithstanding sub-Clauses 4.2 and 4.6 above the Client must satisfy itself as to the suitability of a Candidate for any vacancy, and the Client must be responsible for taking up references and checking the validity of qualifications.

**6. Fees and Payment**

- 6.1 The Introduction Fee payable by the Client to the Agency upon the commencement of an Engagement by a Candidate shall be calculated as a % of the Candidate's remuneration during the first 12 months of the Engagement exclusive of VAT (as shown below).

<b>Basic Salary</b>	<b>% of first 12 month remuneration</b>
£0,000 - £49,999	20%
£50,000 - £79,999	25%
£80,000 - £119,999	30%
£120,000 +	35%

*NB: Remuneration includes car allowance, guaranteed bonuses and sign on incentives for the purposes of the above calculation*

- 6.2 If the Engagement of a Candidate is for a fixed term of less than 12 months then fee will be calculated pro rata as above.
- 6.3 In the event that an Engagement for a fixed term of less than 12 months is extended then a fee based on the Candidate's remuneration for the period up to 12 months from the original Engagement will become payable by the Client.
- 6.4 The Client will not be liable for any fees until a Candidate commences an engagement when the Agency will render an invoice to the Client.
- 6.5 The Client must pay the Agency's fees within 30 days of receiving the invoice.
- 6.6 The Agency reserves the right to charge interest at the rate of 2%% above Bank of England rate of interest per annum on any invoiced fees that remain unpaid by the Client from the due date to the date of payment.
- 6.7 Except where a Candidate has been made redundant the Client may be entitled to either a free replacement or a refund of the Introduction Fee where it was paid on time, and where the Engagement is terminated within 10 weeks of the Candidate commencing the engagement, at the rate of 10% of the Introduction Fee for each week of the 10 week period not worked by the Candidate.

## 7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times:
  - 7.1.1 keep confidential all Confidential Information;
  - 7.1.2 not disclose any Confidential Information to any other party;
  - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions;
  - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 7.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
  - 7.2.1 disclose any Confidential Information to:
    - 7.2.1.1 any sub-contractor or supplier of that Party;
    - 7.2.1.2 any governmental or other authority or regulatory body; or
    - 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons; to such extent only as is necessary for the purposes contemplated by these Terms and Conditions, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 7.2.1.2 above or any authorised employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is, or has become, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of these Terms and Conditions for any reason.

## 8. Data Protection

8.1 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 Data Protection Laws 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 in the public domain.

## 9. Termination

9.1 Either party shall be entitled to terminate this Agreement without cause or for convenience upon providing the other party with not less than 3(three) months prior written notice.

9.2 Either party shall be entitled to terminate this Agreement forthwith upon written notice to the other party in the event that:

9.2.1 the other party has committed a material breach of this Agreement or persistent breaches hereof, and continues in default for thirty (30) days after written notice thereof has been given to such party with a request that such breach or breaches be remedied (where capable of remedy); or

9.2.2 the other party passes a resolution or a court of competent jurisdiction makes an order that such party be wound up otherwise than for the purpose of bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of such party's business or any part thereof, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver, manager or administrator or which entitle the court otherwise than for the purpose of bona fide reconstruction or amalgamation to make a winding up order, or such party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

9.3 The expiration or termination of this Agreement hereunder shall not operate so as to affect such of the provisions hereof as are expressed to operate or have effect after termination thereof and shall be without prejudice to any obligations which shall have accrued and be owing prior thereto.

9.4 The expiration or termination of this Agreement hereunder shall not operate so as to affect the terms laid out in **5.7** and **5.8**, which shall continue to be in force for 3 (three) months after the termination of the Agreement or the timescale stipulated in **5.7** or **5.8** whichever is longer.

## 10. Liability

The Agency shall not be liable or responsible for any loss or damages of any nature whether direct or indirect including any loss of profits or any consequential damages suffered or incurred by the Client as a result of the Introduction of a Candidate to the Client by the Agency, the Engagement of a Candidate Introduced by the Agency or the failure of the Agency to Introduce any Candidate to the Client.

**11. Indemnity**

The Client shall indemnify the Agency against any costs, liability, damages, loss, claims or proceedings which may arise out of its use of the Services or out of any breach of any part of these Terms and Conditions.

**12. Force Majeure**

Neither Party to these Terms and Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

**13. Modification**

13.1 The Agency may modify these Terms and Conditions at any time in adherence with **2.2**.

13.2 If the Client does not agree to be bound by any modified terms and conditions the Agency may introduce, they should immediately cease using the Services upon publication of those terms and conditions.

13.3 Unauthorised alterations or changes made to this Agreement are invalid. Any alterations or changes made to this Agreement can only be made with the written agreement an executive director/legal representative of Montgomery Watt Ltd.

**14. Contracts (Rights of Third Parties) Act 1999**

14.1 Both parties agree that this contract shall not be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999 and this contract can be rescinded or varied by agreement between the parties without the consent of any such third party.

**15. Invalidity**

15.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. If any provision is held to be invalid or unenforceable by any judicial or other competent authority, the parties agree that any such provision shall (where possible) be deemed amended to the minimum extent necessary for such provision to be valid and enforceable and each party shall be entitled to enforce such amended provision as if it had been substituted for the invalid or unenforceable provision on the date hereof.

**16. Law and Jurisdiction**

16.1 These Terms and Conditions (including any non-contractual matters and obligations arising there from or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

16.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions (including any non-contractual matters and obligations arising there from or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.