

TERMS OF BUSINESS – PERMANENT

Solsbury Training & Development Solutions Limited



1 DEFINITIONS

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

"Agreed Purposes" means the sharing of Candidate Personal Data in order for the Client to assess the suitability of a Candidate for an Engagement.

"Candidate" means the person introduced by the Company to the Client for an Engagement including but not limited to any members of the Company'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 whom the Candidate is introduced;

"Company" means Solsbury Training & Development Solutions Limited and/or any subsidiary or associated company of Solsbury Training & Development Solutions Limited;

"Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures" means as set out in the Data Protection Legislation in force at the time;

"Data Protection Legislation" means (i) the Data Protection Act 1998, until the effective date of its repeal; (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; and (ii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

"Engagement" means the engagement, employment or use of the Candidate by the Client on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement, or any other engagement entered into direct between the Client and the Candidate;

"Introduction" means the Client's interview of a Candidate in person or by telephone following the Client's instructions to the Company to search for a Candidate or following the passing to the Client of a curriculum vitae or other information which identifies the Candidate, and which leads in either case to an Engagement of that Candidate by the Client;

"Permitted Recipients" means the Company and the Client, the employees of each party, any third parties engaged to perform obligations in connection with this agreement;

"Remuneration" includes base salary, guaranteed and/or anticipated bonus and commission earning, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, nontaxable) emoluments payment to or receivable by the Candidate for services rendered to the Client. Where a Company car is provided by the Client, a notional amount of £5,000 will be added to the salary in order to calculate the Company's fee;

"Shared Personal Data" means the personal data to be shared between the parties under these Terms of Business. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: name and contact information; qualifications and employment experience; remuneration and financial details; entitlement to work in the UK.

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

1.3 The headings contained in these Terms are for convenience only and do not affect their Interpretation.

1.4 The Company acts as an employment agency (as defined by the Conduct of Employment Agencies and Employment Business Regulations 2003) for the purposes of this Contract. Unless agreed otherwise in writing the Company does not have authority from the Client to complete any contract for an Engagement between the Client and the Candidate on behalf of the Client.

2 THE CONTRACT

2.1 These Terms of business are deemed to be accepted by the Client by virtue of an introduction to or the Engagement of a Candidate.

2.2 Unless otherwise agreed in writing by a Director of the Company, these Terms prevail over any terms of business or purchase conditions put forward by the Client, even if that is subsequent to these Terms being brought to the Client's attention.

2.3 No variation or alteration to these Terms of Business shall be valid unless approved in writing by a Director of the Company.

2.4 The Company will decline to accept any instructions to source Candidate where it believes that instruction to constitute unlawful discrimination.

3 NOTIFICATION OF FEES

3.1 The fee payable to the Company 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. VAT will be charged on the fee.

Remuneration	Introduction Fee
£0 - £13,999	15%
£14,000 - £19,999	17.5%
£20,000 and over	20%

In respect of fixed duration of less than 12 months, the fee will be calculated pro-rata to the fee structure above, subject to a minimum fee of £500.

3.2 No fee is incurred by the Client until the Candidate commences the Engagement when the Company will render an invoice to the Client for its fees.

3.3 The Client agrees:

(a) to notify the Company immediately of any offer of Engagement which it makes to the Candidate;

(b) to notify the Company immediately that its offer of an Engagement to the Candidate has been accepted and forthwith to provide details of the Remuneration to the Company; and

(c) to pay the Company's fee within 14 days of the date of invoice without set-off or deduction.

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3.4 The Company 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 National Westminster Bank Plc from the due date until the date of actual payment.

4 REBATE GUARANTEES

4.1 In order to qualify for the following guarantees, the Client must pay the Company's fees within 14 days of the date of invoice and must notify the Company 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 by reason of the Candidates voluntary resignation the fee will be rebated in accordance with the following Scale of Rebates:

Week in which the Applicant leaves % of Introduction Fee to be rebated

1 – 2	100%
3 – 6	75%
7 – 8	50%
9 – 12	25%

There will be no rebate where the Candidate leaves during or after the 13th week of Engagement.

4.3 The rebate will not apply to Candidates previously supplied to the Client on a temporary basis.

4.4 Should the Client or any subsidiary or associated company of the Client subsequently re-engage the Candidate within the period of 12 calendar months from the date of termination of the Engagement, a further full fee calculated in accordance with clause 3.1 above becomes payable with no further entitlement to rebate.

5 INTRODUCTION

5.1 Introductions of Candidates are confidential. The disclosure by the Client to a third party of any details regarding a Candidate introduced by the Company which results in an Engagement with that third party within 6 months of the introduction renders the Client liable to payment of the Company's fees as set out in clause 3.1, with no entitlement to any rebate under clause 4.

5.2 An introduction fee calculated in accordance with clause 3.1 will be charged in relation to any Candidate engaged as a consequence of or resulting from an introduction by or through the company, whether direct or indirect, within 6 months from the date of the Company introduction.

6 SUITABILITY

6.1 The Company endeavours to ensure the suitability of any Candidate introduced to the Client, as set out below. Notwithstanding this the Client shall satisfy itself and be the sole arbiter as to the suitability of the Candidate and is encouraged to take up any references provided by the Candidate and/or the Company before Engagement of such Candidate. The Client shall be responsible for obtaining work and other permits if required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate

and for ensuring that the Candidate satisfies any medical and other requirements or qualifications required by law of the country or trade in which the Candidate is engaged to work.

6.2 The Client must supply to the Company before any introduction the following information in writing; -

- (a) the Client's identity and the nature of its business;
- (b) the date on which the Client requires a Candidate to commence work, and the duration or likely duration of the work;
- (c) the position for which a Candidate is sought, including the type of work the Candidate would be required to do, the location at which and the hours during which he would be required to do it, and any risks to health or safety of the Candidate known to the Client and the steps which the Client has taken to prevent or control such risks;
- (d) the experience, training, qualifications and any authorisations which the Client considers are necessary or required by law or any professional body for a Candidate to possess in order to work in the relevant position, and the ability which the Client considers is necessary for a Candidate to possess in order to do so successfully;
- (e) any expenses payable by or to the successful Candidate;
- (f) the minimum rate of remuneration and any other benefits which the Client would offer to a person in the position which it seeks to fill, and the intervals at which such remuneration or other benefits would be paid; and
- (g) the length of notice which the successful Candidate in such a position would be required to give and entitled to receive to terminate the Engagement with the Client.

7 ADVERTISING

In order to source suitable Candidates, the Employment Agency may advertise the positions the Client has instructed the Employment Agency to fill.

8 DATA PROTECTION

8.1 This clause 8 sets out the framework for the sharing of personal data between the Company and the Client as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

8.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

8.3 Each party shall:

- (i) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- (ii) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (iii) process the Shared Personal Data only for the Agreed Purposes;
- (iv) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (v) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;



- (vi) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- (vii) not transfer any personal data outside of the European Economic Area unless the transferor:

- (a) complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
- (b) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

8.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (i) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (ii) promptly inform the other party about the receipt of any data subject access request;
- (iii) provide the other party with reasonable assistance in complying with any data subject access request;
- (iv) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (v) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (vii) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (viii) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (ix) maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the other party or the other party's designated auditor; and

- (x) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

8.5 The Client indemnifies and shall keep indemnified the Company from and against any and all fines, losses, costs, liabilities, expenses and damages (including, but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all fines, interest, penalties and legal fees and expenses (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Company arising out of or in connection with the Client's breach of this clause 8 or the Data Protection Legislation.

8.6 The Company's total aggregate liability to the Client, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, arising from or in connection with a breach of this clause 8 or the Data Protection Legislation by the Company shall be limited to £200,000. The Company's liability for all indirect, consequential and special loss shall be excluded.

9 LIABILITY

The Company shall not be liable under any circumstances for any loss, expense, damage, delay, cost 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 Company seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client (including any Act or omission on the part of the Candidate) or from the failure of the Company to introduce any Candidate. For the avoidance of doubt, the Company does not exclude liability for death or personal injury arising from its own negligence.

10 LAW

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

11 VARIATION OF TERMS

In the event that the Company and the Client agree to a variation of the terms herein the Company shall, as soon as is reasonably practicable, provide the Client with a document detailing the variation and stating the date on or after which it is agreed that the reviewed terms are to take effect.

12 COMPLAINTS

Any complaints must be addressed to a Director of the Company in writing.

Signed for and on behalf of the Hirer

[print name here]

I confirm I am authorized to sign these Terms for and on behalf of the Client.

Date