

Terms of Business for Beach Baker Limited

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM CONTRACT STAFF

TO BE DIRECTLY EMPLOYED BY THE CLIENT.

1. Definitions

1.1 In these terms of business ("Terms") the following definitions apply:

"Associate" means associate as defined by s435 Insolvency Act 1986;

"Candidate" means any person Introduced to the Client by the Consultancy for an Engagement including without limitation any officer, partner or employee of the person Introduced if that person Introduced is a limited company or other intermediary, and members of the Consultancy's own staff;

"Client" means the person to whom the Candidate is Introduced for a potential Engagement;

"Consultancy" means Beach Baker Ltd, company number 06462295, registered office 40 Berkeley Square, Bristol, BS8 1HP;

"Engage" means to engage, employ, use or enter into any other arrangement to receive the services of, whether under a contract of employment, service contract, contract for services, consultancy agreement or any other arrangement, whether directly or through any intermediary person, whether on a permanent, temporary or ad hoc basis or through an employment business (as defined in sections 13(1) and (3) of the Employment Agencies Act 1973 as amended from time to time), or to enter into partnership with, or contract under a licence, agency or franchise agreement, and "Engagement" shall have a corresponding meaning;

"Fee" means the fee as set out in Table 1 below;

"Introduce" means the supply, either orally or in writing, to the Client by the Consultancy of the name and curriculum vitae of, or other information which identifies or is used to identify, a person who is seeking an Engagement, whether or not that person was previously known to the Client, and "Introduction" shall have a corresponding meaning;

"Regulations" means the Employment Agencies and Employment Businesses Regulations 2003 as amended from time to time;

"Remuneration" means:

- (1) in the case of a Candidate Engaged by the Client (or Third Party as the case may be) under a contract of employment or service agreement, the base salary, annualised hourly rates or fees, plus any other gross income and benefits guaranteed to the Candidate including without limitation guaranteed and/or anticipated bonus and commission earnings, car allowance, allowances, inducement payments, and all other payments and taxable (and, where applicable, non-taxable) benefits and emoluments payable to or receivable by the Candidate in relation to such Engagement for the first year of the Engagement. Where the Client (or Third Party as the case may be) provides a company car, a notional amount of £6,000 will be added; or
- (2) in the case of a Candidate Engaged by the Client (or a Third Party as the case may be) other than under a contract of employment or service agreement, the total guaranteed and/or reasonably anticipated payments, excluding reimbursement of out-of-pocket expenses and VAT, receivable by the Candidate in respect of such Engagement for the first year of the Engagement;

"Third Party" means a person to whom the Client or the Client's employee, agent or subcontractor gives details of or refers a Candidate and includes without limitation any Associate of that third party person.

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.

1.4 A reference to a 'person' includes any individual, firm, company, corporation, body corporate, government, state or agency of state, joint venture, association (whether or not having separate legal personality and irrespective of the laws of the jurisdiction in or under which it was incorporated or exists).

2. The Contract

2.1 These Terms constitute the contract between the Consultancy and the Client governing the Introduction of all Candidates by the Consultancy to the Client, and are deemed to be accepted by the Client by virtue of a request for the Introduction of a Candidate, or any act by the Client of accepting or requesting services from the Consultancy, or using in any way information requested from the Consultancy relating to a Candidate, and in any event by the Engagement of a Candidate by the Client or a Third Party following such request. An Introduction to one division of a Client is deemed an Introduction to all divisions of a Client.

2.2 These terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Consultancy, these Terms prevail over any other 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 Consultancy and the Client and are set out in writing in the special conditions box and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4 By asking the Consultancy to Introduce Candidates to the Client for a position, the Client is authorising the Consultancy to advertise such position.

.2.5 Under these Terms the Consultancy will operate as an employment agency as defined in sections 13(1) and (2) of the Employment Agencies Act 1973. The Consultancy does not have authority to act for the Client, nor is it authorised to enter into contracts with Candidates on behalf of the Client.

3. Notification and Fees

.3.1 The Client agrees to notify the Consultancy immediately:

- (a) of any offer of an Engagement which it makes to the Candidate;
- (b) that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration to the Consultancy;
- (c) it becomes aware of any Third Party Engaging a Candidate and to provide any details of Remuneration it is aware of.

.3.2 The Consultancy is entitled to charge and invoice the Client for the Fee upon the Client or a Third Party Engaging a Candidate within 12 months of the most recent Introduction of that Candidate, whether or not such Introduction is the effective cause of such Engagement.

.3.3 If an Introduction can reasonably be said to have led, whether directly or indirectly, to a purchase by the Client, or an Associate of the Client or a Third Party, of a business or a person owning a business, within two years of the Introduction, then the Consultancy will be entitled to charge the Client a fee equal to the higher of (1) 5% of the average annual turnover in the three financial years of the business or person owning the business prior to the purchase, and (2) 5% of the overall purchase price of that business or person owning the business. For the purposes of this clause, the overall purchase price of that business or person owning the business shall include any amount which can reasonably be attributed as being part of the purchase price, including without limitation any other consideration (in cash or otherwise) whenever payable, including without limitation any consideration payable as a benefit to the seller(s) of the business or person owning the business, which having regard to the substance of the transaction as a whole can reasonably be regarded as being in addition to the price paid or payable for the business or person owning the business.

.3.4 The Client shall not take any steps to prejudice or avoid payment of a Fee properly due to the Consultancy.

Table 1 – Fees

Total Remuneration	Fee as a percentage of total Remuneration:
Less than £30,000	20%
£30,000 to £49,999	22%
£50,000 to £99,999	25%
£100,000 and over	30%

.3.5 In the case of part-time roles, the Remuneration for the equivalent full-time role shall be used to determine the total Remuneration band in the left hand column of Table 1, and the corresponding percentage shall be applied to the actual Remuneration to calculate the Fee.

.3.6 For fixed-term Engagements of less than 6 months duration, the Fee shall be 50% of the Fee as calculated in accordance with Table 1, and for fixed-term Engagements of 6 months or longer, the Fee shall be pro rata of the Fee as calculated in accordance with Table 1. For the purposes of calculating the total Remuneration for fixed-term Engagements of up to 12 months duration, so as to determine the Remuneration band in the left hand column of Table 1, the amount of the Remuneration for the period of the fixed-term Engagement shall be extrapolated on a directly proportional basis to the amount payable over a 12 month period. If a fixed-term Engagement of less than 6 months is extended beyond the initial fixed term or if the Client re-Engages the Candidate within 6 months from the date of termination of the first fixed-term Engagement, the Client shall be liable to pay the full Fee based on the annualised Remuneration applicable for the second period of Engagement. If the standard Fee as set out in Table 1 has been discounted for any reason and the invoice for the Fee is not paid within 30 days of the date of the invoice, then the standard Fee as set out in Table 1 shall apply and the Consultancy shall be entitled to invoice for the balance.

.3.7 Where there is a dispute as to the level of Remuneration, the parties shall use their best endeavours to reach agreement as soon as possible. Where the amount of the actual Remuneration is not known, the Consultancy is entitled to charge the Fee (on a permanent full-time basis) calculated on the reasonable level of remuneration applicable for the position in which the Candidate has been Engaged with regard to any information supplied to the Consultancy by the Client and/or comparable positions in the market generally for such positions.

.3.8 Notwithstanding any other provisions of this Agreement, if any employee of the Consultancy with whom the Client has had personal dealings accepts an Engagement with the Client within 6 months of leaving the Consultancy's employment, the Consultancy shall be entitled to charge the Fee on the basis that the employee is deemed a Candidate.

.3.9 The Client shall not be entitled to avoid paying any fee otherwise payable in accordance with these Terms for the reason that (1) the Candidate was already known to the Client prior to the Introduction, or (2) the Client has already paid, or will or may be liable to pay, a fee to another employment agency in respect of the same Candidate, or (3) the Candidate is Engaged in a different position to that for which he was Introduced.

4. Payment

- .4.1 The Client shall pay all invoices, without set-off or deduction, within 30 days from the date of the invoice.
- .4.2 VAT will be charged on all invoiced amounts if applicable.
- .4.3 If any amounts are unpaid by their due date, the Consultancy is entitled to charge a compensatory fixed sum and interest in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended. Interest shall be compounded monthly.

5. Refunds

- .5.1 Subject to clauses 5.2, the Consultancy shall rebate the Client a percentage of the fee as set out in Table 2 if no suitable replacement can be found in respect of any particular Candidate (less an administrative fee of £500) if such Candidate ceases to be Engaged.
- .5.2 A rebate will not be payable:
 - (a) if the invoice against which the rebate is payable is not paid by the due date.
 - (b) if notification in writing is not received by the Consultancy within 72 hours of termination, giving reason for termination and date of termination.
 - (c) if the Candidate has been made redundant as defined in section 139 of the Employment Rights Act 1996.
 - (d) in respect of Engagements by Third Parties.
 - (e) in respect of any fee charged in accordance with clause 3.9 (re-Engagement after withdrawal of offer), clause 3.10 (Engagement of Consultancy employee), or in respect of any extension or re-Engagement in accordance with clause 3.7.
 - (f) in respect of fixed-term Engagements set for a period of 6 months or less.
 - (g) in respect of Candidates previously supplied to the Client on a temporary or fixed term basis.
- .5.3 Subject to clause 5.2, the Consultancy shall rebate the Client the percentage of the Fee paid (or balance of the Fee paid after reductions if reductions are made pursuant to clause 3.5) as set out in Table 2 below in respect of any particular Candidate (less an administrative fee of £500) if such Candidate ceases to be Engaged within twelve weeks of the start of the Engagement (and in the case of a fixed term Engagement before the expiry of such fixed term).

Table 2 - Refunds

Length of Engagement	% refund of Fee paid
Less than 2 weeks	80
2-8 weeks	50
9-12 weeks	25

- .5.4 If the Client Engages a Candidate, in respect of whom a rebate has been paid, within 6 months of the termination of the previous Engagement, the Client shall repay the rebate to the Consultancy immediately, collectible as a debt, and no further rebate shall be payable in respect of that Candidate. In addition, the Consultancy shall be entitled to invoice for the full fee, as set out in Table 1 (less any amount already invoiced).

6. Suitability and References

- .6.1 The Consultancy endeavours to ensure the suitability of any Candidate introduced to the Client by obtaining confirmation from the Candidate of the Candidate's identity; that the Candidate 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 Candidate is willing to work in the position which the Client seeks to fill.
- .6.2 At the same time as proposing a Candidate to the Client the Consultancy shall inform the Client of such matters in clause 6.1 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 within three business days, save where the Candidate is being proposed for a position which is the same as one in which the Candidate has worked within the previous five business days and such information has already been given to the Client.
- .6.3 The Consultancy endeavours to take all such steps as are reasonably practicable to ensure that the Client and Candidate are aware of any requirements imposed by law or any professional body to enable the Candidate to work in the position which the Client seeks to fill.
- .6.4 Notwithstanding clauses 6.1, 6.2 and 6.3 above, the Client shall satisfy itself as to the suitability of the Candidate, and the Client shall take up any reference provided by the Candidate to the Client or the Consultancy, before engaging such Candidate. The Consultancy makes no warranty, express or implied, as to the accuracy of such references or qualifications and shall not be liable for any inaccurate information or misstatements other than those arising from its own negligence. 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 Candidate, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Candidate is engaged to work.

.6.5 To enable the Consultancy to comply with its obligations under clauses 6.1, 6.2 and 6.3 above the Client undertakes to provide the Consultancy with details of the position which the Client seeks to fill, including the type of work that the Candidate 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 Candidate 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 Candidate to commence the Engagement, the duration or likely duration of the Engagement; 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 Candidate would be entitled to give and receive to terminate the Engagement with the Client.

7. Special Situations

.7.1 Where the Candidate is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring for or attending a vulnerable person (as defined in the Regulations), the Consultancy will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Candidate, two references from persons not related to the Candidate who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Candidate is suitable for the position. If the Consultancy is unable to do any of the above, it shall inform the Client of the steps it has taken to obtain this information in any event.

8. Intellectual Property Rights

.8.1 Where the Client provides the Consultancy with logos, trademarks and other items of intellectual property for use by the Consultancy in advertising and promotional material developed on behalf of the Client, the Client warrants that it is either the sole legal and beneficial owner of any and all intellectual property or that it has the right to grant the Consultancy the necessary authority to use such intellectual property.

.8.2 The Client shall indemnify and hold the Consultancy harmless on demand, from and against all financial liability (including legal fees) arising from or in connection with any actual or alleged third party claim brought against the Consultancy for infringement of any third party intellectual property rights and which arise out of or in connection with the Consultancy's or the Client's use or possession of the material which the Client provided to the Consultancy pursuant to condition 8.1 above.

9. Liability

.9.1 The Consultancy shall not be liable under any circumstances under contract, tort (including without limitation negligence) 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 Consultancy 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 Consultancy to Introduce any Candidate or from any act or omission on the part of any Candidate Introduced by the Consultancy. For the avoidance of doubt, the Consultancy does not exclude liability for death or personal injury arising from its own negligence.

.9.2 The Consultancy accepts no liability for the accuracy, truth or completeness of information provided in good faith to the Client which the Consultancy obtains from third parties, including without limitation information obtained from Candidates.

10. Law

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

.10.2 To the extent that any provisions of these Terms are found by any court or competent authority to be unenforceable, invalid or unlawful, that provision shall be deemed not to be a part of these Terms, it shall not affect the enforceability of the remainder of these Terms, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

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Name (Block capitals)

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Job Title (Block capitals)

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Signed for and on behalf of the Client

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Date

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Client name (Block capitals)