

TERMS OF BUSINESS FOR EXECUTIVE SEARCH

1. DEFINITIONS

In these Terms the following definitions apply:

“Agency”

David Thew & Company Limited (registered company no. 8362654) of Elmsbrook, Nocton Road, Potterhanworth, Lincolnshire, LN4 2DN

“Cancellation Fee”

means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.10;

“Candidate”

means the person Introduced by the Agency to the Client for an Engagement 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;

“Client”

means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is introduced;

“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; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“Introduction”

means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client's interview of a Candidate (in person, by telephone or by any other means), following the Client's instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;

“Introduction Fee”

means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;

“Remuneration”

includes gross base salary or fees, guaranteed bonus and commission earnings, allowances, inducement payments, and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party.

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Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa. 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(s) ("the Terms") constitute the contract between the Agency and the Client for the supply of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

2.2

These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.3

The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

3. NOTIFICATION AND FEES

3.1

The Client agrees to:

3.1.1

notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;

3.1.2

notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and

3.1.2

pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.5.

3.1.3

The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client engages the Candidate within the period of 12 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later)

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3.2.

The Introduction Fee is the amount equal to:

30% of guaranteed first-year remuneration, payable in two stages as follows:

One-third on instruction based on a notional base salary agreed with the Client

The remainder on confirmed acceptance of offer by the Candidate, adjusted according to the actual value of the accepted offer

3.3

Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 12 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.

3.4

The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

3.5

The Introduction Fee shall be payable within 30 days of the date of the Agency's invoice which shall be rendered once the Candidate accepts the offer of the Engagement, whether such offer is conditional or not. Any variation in payment due dates must be agreed in writing by a Director of the Agency. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the agreed 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.

3.6

VAT is charged at the standard rate on all fees where applicable.

3.7

If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it subsequent to the Candidate accepting the Engagement but before the Candidate has commenced the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee equivalent to 10% of the fee which would have otherwise been due.

3.8

In the event that any Agency 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], the Client shall be liable to pay an Introduction Fee to the Agency calculated in accordance with clause 3.2.

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4. REFUNDS

4.1

If, after an offer has been made and accepted, the Engagement does not commence because the Candidate withdraws their acceptance, the Agency will either (a) refund in full any fees which have been paid by the Client for this Engagement or (b) find a replacement Candidate free of charge, whichever option is preferred by the Client.

4.2

If, once the Engagement has commenced, it is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 12 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2 the Agency will refund the Introduction Fee according to the following scale:

- Up to and including 4 weeks from commencement of the Engagement, the Agency will refund 100% of any fees already paid by the Client for this Engagement
- After 4 weeks and up to and including 8 weeks from the commencement of the Engagement, the Agency will refund 75%
- After 8 weeks and up to and including a maximum of 12 weeks from commencement of the Engagement, the Agency will refund 50%

NB: the Client 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. No refund will be due where all or any part of a fee has not been received by the Agency due to late payment.

4.3

For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.

4.4

If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 12 calendar months from the date of termination then the 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. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a "Third Party Introduction". If that 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 in accordance with clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

6. SUITABILITY CHECKS

6.1

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The Agency endeavours 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:

- 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; [and]
- confirm that the Candidate is willing to work in the position

6.2

Notwithstanding clause 6.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:

- taking up any references provided by the Candidate before Engaging the Candidate;
- 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;
- 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 for the Candidate to work in the Engagement.

6.3

To enable the Agency to comply with its obligations under 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:

- 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;
- any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 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 their employment with the Client.

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7. INFORMATION TO BE PROVIDED

When the Agency Introduces a Candidate to the Client the Agency shall inform the Client that they have obtained confirmation of the matters set out in clause 6.1. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

8. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Candidate is confidential and subject to the Data Protection Act 1998 ("DPA") 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 DPA 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. LIABILITY

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 or for any other loss which it is not permitted to exclude under law.

10. NOTICES

All notices which are required to be given in accordance with this Agreement 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, by email or facsimile transmission. 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 or facsimile transmission, when that email or facsimile is sent.

11. 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.

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

Signed for and on behalf of the Client

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Print name

I confirm I am authorised to sign these Terms on behalf of the Client.

Date _____

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