



MACKINNON BRUCE

INTERNATIONAL

Mackinnon Bruce Ltd Terms and Conditions (the "Terms")

Section 1 – Definitions

1.1 In these Terms:-

"Advertised Selection Services" has the meaning given in Section 4.2;

"Applicant" means a person Introduced by the Company to the Client;

"Client" means the person, firm or body corporate together with any holding, subsidiary or associated company (each as defined in the Companies Act 1985) to which an Applicant is introduced or which appoints the Company to provide recruitment services;

"Company" means Mackinnon Bruce acting as an Employment Agency;

"Engagement" means the engagement, employment or use of the Applicant by the Client (whether for the position originally advertised or otherwise) whether as an employee, partner, consultant or otherwise (and whether on an employed or self employed basis) or an offer of the same by the Client which is subsequently accepted by the Applicant and "Engaged" and "Engages" shall have the equivalent meanings;

"Executive Search and Selection Services" has the meaning given in Section 4.1;

"Introduction" means receipt of a CV or profile of a person (whether in paper, electronic or other format) and "Introduced" shall have the equivalent meaning; and "Introduction Fee" has the meaning given in Section 5.1;

"Total Annual Commencing Remuneration" means the first year's annual remuneration including base salary or fees, allowances, one-off payments upon joining (including any relocation allowances), pension contributions, guaranteed bonuses or commissions, profit share or performance bonuses (which shall be based on projected values), the full monetary value of living or accommodation allowances (or the actual provision of accommodation which shall be deemed to be valued at £10,000), all weightings (including any compensation for living away from his/her home location), the full monetary value of car allowances (or the actual provision of a company car which shall be deemed to be valued at £5,000 per annum), the provision of Private Medical Cover (which shall be deemed to be valued at £1,000), the value of any stock options that can be exercised within the first twelve months of the Engagement (which shall be valued at the difference between the option price and the closing mid-market price on the business day immediately preceding the day that the candidate commences the Engagement) and any other contractual benefits which form part of the total remuneration package or other taxable emoluments offered to the Applicant.

1.2 In these Terms words importing one gender shall be treated as importing any gender, words importing the singular shall be treated as importing the plural and viceversa and words importing companies shall be treated as importing individuals and vice versa.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

Section 2 – Contract

2.1 All business undertaken by the Company for the Client is governed by these Terms. These Terms may only be varied by an agreement in writing signed by a Director of the Company.

2.2 The interviewing (or the arrangement of an interview) or offering of an Engagement by the Client to an Applicant introduced by the Company shall be deemed to be acceptance by the Client of these Terms. Where the Client appoints the Company to provide Executive Search and Selection or Advertised Selection Services these Terms shall be deemed to be accepted when the Client instructs the Company (whether orally or in writing).

Section 3 - Applicant Placement

3.1 If the Company makes an Introduction to a Client (in a situation where the Company has not been appointed to carry out an Executive Search and Selection or an Advertised Selection) the Client shall, subject to the provisions of Section 5.2 to 5.9, pay the Company the Introduction Fee calculated in accordance with Section 5.1 on the date the Client Engages the Applicant. The Introduction Fee is payable if any Applicant is Engaged by the Client within 12 months from last contact made by the client following an Introduction irrespective of whether further interviews are organised by the Company and irrespective of whether or not the Company was the effective cause of the offer of Engagement.

Section 4 - Executive Search and Selection and Advertised Selection

4.1 Executive Search and Selection Services is when the Company is appointed to locate one or more candidates to fulfil a particular role or roles within the Client, the Company doing so by what means it considers appropriate but which will usually involve a direct approach to potential candidates.

4.2 Advertised Selection Services is when the Company is engaged to locate one or more candidates to fulfil a particular role within the Client, the Company doing so by what means it considers appropriate but which will usually involve the advertising for potential candidates in such publications as are agreed between the Company and the Client or if no agreement then such publications as the Company considers appropriate.

4.3 Where a Client appoints the Company to provide Executive Search and Selection Services or Advertised Selection Services it shall do so on an exclusive basis. If, despite the provisions of this Section, the Client Engages a person, other than an Applicant, to fulfil a role in relation to which it has appointed the Company (irrespective of whether the person is sourced from a third party, by the Client or whether the person is or was previously Engaged by the Client or otherwise) it shall, in relation to such Engagement, pay the Company the Introduction Fee that would have been payable had such person been Introduced by the Company.

4.4 In consideration for the Company providing Executive Search and Selection Services or Advertised Selection Services, the Client shall pay the Company the Introduction Fee calculated in accordance with the Section 5.1 (but subject to the provision of Sections 5.2 to 5.9) unless a specific fee is agreed in writing between a Director of the Company and the Client prior to the work of the Company commencing.

4.5 The Introduction Fee due pursuant to Section 4.4 is payable in 3 instalments: one third of the fee is chargeable and payable on the Client giving instruction to the Company to act on its behalf; one third of the fee is chargeable and payable on the Company providing the Client with a shortlist of Applicants for interview; and the final balance of the fee is chargeable and payable when an Applicant provides written acceptance of the Client's offer (or if sooner on the date the Engagement of the Applicant commences). The first 2 instalments will be based on an estimate of the Total Annual Commencing Remuneration. Each instalment is non-refundable irrespective of whether any offer of Engagement or Engagement is made by the Client.

4.6 For the avoidance of doubt, if in addition to the Applicant who the Client Engages for the position the Company were appointed to provide Executive Search and Selection Services or Advertised Selection Services in relation to, the Client Engages any of the other Applicants who were identified by the Company at any time between the Introduction of such Applicant and the date 12 months following the appointment of the successful Applicant the Client shall pay the Company an Introduction Fee relating to such Engagement.

4.7 If the Client withdraws the instruction to the Company to proceed with any Executive Search and Selection Services or Advertised Selection Services assignment, or materially alters its instructions submitted to the Company once the campaign has started and accordingly the original campaign project is not concluded then a withdrawal/cancellation fee equivalent to 50% of the balance of the Introduction Fee (or agreed assignment fee) that would have been paid had an Applicant been engaged that has not been invoiced at that date will be immediately due and payable (and for these purposes the Introduction Fee shall be based upon what the Company estimates to be the total of the probable fees based on the estimated Total Annual Commencing Remuneration of each of the positions to be filled by the search and where a salary band has been given for the position the estimate will be based on the salary at the upper end of the band). For the avoidance of doubt this sum will be payable in addition to any instalments that have already been invoiced to the Client.

4.8 An additional charge will be made to the Client for out of pocket expenses necessarily incurred in performing the obligations of the company under these Terms (for example, but not limited to, accommodation and travel expenses).

Section 5 - Introduction Fee

5.1 The Introduction Fee is calculated as a percentage of Total Annual Commencing Remuneration as follows:

Total Annual Commencing Remuneration Proportion

to £24,999 30%

£25,000 to £99,999 35%

£100,000 to £199,999 38%

£200,000 plus 40%

5.2 The Introduction Fee shall also be payable by the Client if the offer of an Engagement or the Engagement itself is by an associated, holding or subsidiary individual, firm or corporation of the Client.

5.3 Where the Client Engages an employee of the Company (whether or not as a result of an Introduction) the Company shall be deemed to have Introduced that individual to the Client and the Client shall be charged an Introduction Fee on the basis set out in Section 5.1 subject to minimum fee of £15,000.

5.4 The Introduction Fee in respect of Applicants appointed to non-executive directorships or consultancy roles will be equivalent to the Total Annual Commencing Remuneration paid to that Applicant, subject to a minimum fee of £25,000. Such Introductions will not have the benefit of the "replacement employee" facility provided pursuant to Section 7.1.

5.5 The Introduction Fee in respect of the Introduction of Applicants appointed to commission-only roles will be subject to a minimum of £15,000.

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5.6 If the period of the Engagement is for less than twelve months, the Introduction Fee shall be calculated on the annual equivalent value of the remuneration (including all elements specified in the definition of Total Annual Commencing Remuneration) to be paid to the Applicant under the contract. That remuneration is for this purpose grossed up to provide a figure for the equivalent annual value. After any engagement for a period of less than 12 months should the contract become permanent our standard introduction fee is applicable as per Section 5 irrespective of previous engagements.

5.7 If by the date the Applicant begins his Engagement for whatever reason the Company is not in a position to ascertain the Total Annual Commencing Remuneration, the Company shall be entitled to submit an invoice for, and the Company shall be obliged to pay, the greater of: (i) the Applicant's previous remuneration package; or (ii) the highest salary at which the position was advertised (in each case including all items set out in the definition of Total Annual Commencing Remuneration). The Client agrees that if this sum is higher than the Total Annual Commencing Remuneration it shall not be entitled to recover the excess from the Company but that if the sum determined pursuant to this clause is lower than the Total Annual Commencing Remuneration nothing in this Section in any way limits or prejudices the Company's rights to recover the difference.

5.8 If the Client refers an Applicant on to a third party who subsequently Engages such Applicant within 12 months of the Company's latest contact with the Client regarding that Applicant, the Client will be liable to pay an Introduction Fee on the same basis that such fee would have been paid if the Engagement had been by the Client. It is the Client's responsibility to notify the third party of the Company's involvement at the time of the referral.

Section 6 - Advertising Fees

6.1 The Client will be charged separately for any advertising that the Company arranges on behalf of the Client, provided that such advertising has been agreed between the Client and the Company.

6.2 Additional advertisement costs incurred by the Company in connection with the preparation or production of advertisement material, such as set up charges, artwork etc., will be charged to the Client. Such charges will normally not exceed £500 without the prior authority of the Client.

6.3 Invoices will be raised to the Client upon receipt of written confirmation of the order of the Client for the advertisement or as soon as reasonably practicable thereafter. All advertising (and accordingly the related fees, charges and costs) are non-cancellable unless agreed in writing by a Director of the Company.

Section 7 - Replacement Employee Facility

7.1 If an Applicant leaves the Client's employment within the first 8 weeks from the date on which their Engagement commenced (save where the Engagement is for a fixed

period of less than 8 weeks) then the Company will provide that (i) all the Company's invoices have been paid by the due dates; (ii) the Company has received notification by recorded delivery within 7 days of the Applicant's departure; (iii) the termination is not due to redundancy or a material change in the job description; and (iv) the Client does not re-Engage the Applicant in any capacity in the following 12 months, use reasonable endeavours to provide a replacement Applicant for no additional fee. If the Client does re-Engage the Applicant, the Client shall pay the Company an Introduction Fee in relation to the appointment of the replacement.

Section 8 - Referencing Terms & Conditions

8.1 Copyright and Confidentiality

(a) Title to and all of the intellectual property rights in all reports and information provided to the Client by the Company shall at all times remain vested in the Company and the Client shall acquire no intellectual property rights whatsoever therein. The Client shall be entitled to make such number of copies thereof as it may reasonably require for those purposes permitted under sub-section 8.1 (b) below.

(b) The Client undertakes that it shall use all information provided by the Company solely for the internal purposes of ratification of candidate details for recruitment purposes only and agrees to:

(i) Keep the information strictly confidential;

(ii) Not publish all or any part of the information;

(iii) Not allow any Applicant to see all or any part of the document;

(iv) Not divulge or disclose all or any part of the information to any third party;

(v) Permit access to the information only to those of its officers or employees who need to know the information and, without limiting the liability of the Client for breach of this Section, the Client shall ensure that its officers and employees also comply with the provisions of this Section.

8.2 Security

(a) The Client agrees that it will at all times comply with all data protection laws and regulations (including the Data Protection Act 1998).

(b) The Client agrees that it will maintain appropriate technical and organisational security measures and procedures to prevent accidental or unauthorised persons gaining access to all or any part of the information relating to a candidate provided by the Company.

(c) The Client will inform the Company immediately on becoming aware of any unauthorised use and/or disclosure all or any part of any material relating to an Applicant.

8.3 Liabilities of the Company and the Client

(a) The Client agrees and acknowledges that the information provided to it by the Company is provided on the assumption that it is not used as the sole basis of the decision of the Client regarding whether to Engage an Applicant. The Company does not take up references on Applicants unless it specifically agrees to do so and the Client is advised and recommended to do so before making an offer of Engagement. The Client shall not make any approach to any Applicant's present or prior employers without the Applicant's prior written consent.

(b) The Client acknowledges that information regarding Applicants will represent or be based on information provided to the Company by third parties whose accuracy the Company cannot control.

(c) The Client acknowledges and agrees that:

(i) The Company does not make any warranty (express or implied) as to the accuracy of any information provided in relation to an Applicant or the validity of any advice given or opinion expressed on the basis of such information or as to the suitability of any Applicant introduced by the Company;

(ii) Subject to sub-Section c(iii) below, the Company shall not be liable to the Client for any loss, liability, damage, costs, claims or expenses suffered or incurred by the Client arising (either directly or indirectly) from or connected with: (i) its use of any information provided by the

Company in relation to an Applicant or its reliance upon any advice or opinion expressed on the basis of such information or otherwise; (ii) the interviewing or Engagement of any Applicant (including, but not limited to, in relation to any claim made by an Applicant); (iii) any act or omission of an Applicant in pursuing his/her employment duties.

(ii) subject to sub-Section c(iii) below, the Company will not be liable for any indirect or consequential loss or loss of profits incurred by the Client.

(iii) The Company does not exclude liability for death or personal injury arising from its own negligence or liability for fraud or fraudulent misrepresentation.

(iv) The Client shall fully and effectively indemnify and keep indemnified the Company on demand for any and all losses, damages, liabilities, penalties, suits and expenses arising out of or relating to: (a) any breach by the Client of its obligations under these Terms and Conditions; or (b) the Engagement of any Applicant and any act or omission of any Applicant in pursuing his/her employment duties.

8.4 Co-operation and Assistance

The Client shall at its own cost co-operate with the Company to such extent and provide to the Company such information and assistance as the Company shall reasonably require to enable the Company to perform its obligations under these Terms and to enable Total Annual Commencing Remuneration to be calculated.

8.5 Consent

The Company will assume all responsibility for gaining the consent from the candidate to be reference checked.

Section 9 - General Provisions

9.1 Unless otherwise agreed in writing, all invoices must be paid within 7 days of the invoice date. If invoices are not settled within 7 days then, without prejudice to its right to recover that payment from the Client, the Company shall (i) be entitled to charge interest on the amount that remains unpaid at the rate of 3% above HSBC minimum lending rate; (ii) suspend provision of any services and (iii) be under no obligation to provide the replacement employee facility referred to in Section 6. And (iv) be entitled to remove any discount given from the standard introduction fee referred to in Section 5.

Overdue accounts will be passed to a debt recovery agency, and all costs incurred will be recoverable from the Client.

9.2 The company reserves the right at any time to withdraw any credit terms granted.

9.3 All sums referred to in these Terms are subject to VAT where applicable.

9.4 This is the entire agreement between the parties and any variation or addition to it must be in writing and signed by a director of The Company.

9.5 In the event that any variations or additions to these terms have been made in accordance with paragraph 9.4 above, and the Client subsequently makes an Engagement of an Applicant without notifying the Company in writing within 14 days of the commencement of the Engagement, then any agreed variation or addition to these terms shall cease to have effect and the standard terms set out herein shall apply.

9.6 These Terms supersede any previous agreement between the parties

9.7 These Terms shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

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