



# MACKINNON BRUCE

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## INTERNATIONAL

### **Mackinnon Bruce Terms and Conditions (the “Terms”)**

#### **Definitions**

The following definitions apply in these Conditions:

**Applicant:** a person We Introduce to You to be considered for an Engagement.

**Conditions:** these terms and conditions as amended from time to time.

**Contract:** the contract between us for the supply of Services.

**Data Protection Legislation:** the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time.

**Engagement:** your engagement, employment, hire or use of the Applicant (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, directly or through a limited company which the Applicant is an officer or employee of) or your offer of this which is accepted by the Applicant (Engaged and Engages shall have the equivalent meanings).

**Fees:** the fees You will pay for the supply of the Services set out in clause 6.

**GDPR:** General Data Protection Regulation ((EU) 2016/679).

**Introduction:** provision of a CV or profile of an Applicant (in paper, electronic or other format) and regardless of whether the Applicant may have been previously or subsequently introduced by another person (Introduced shall have the equivalent meaning).

**Remuneration:** all base salary, wages or fees, profit shares, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car or car allowance (or the actual provision of a company car which shall be deemed to be valued at [£7,500, £10,000 or £15,000 per annum based on salary thresholds of £24,999 - £99,999/ £100,000 - £199,999/ over £200,000, respectively,] unless You tell Us otherwise), living or accommodation allowances, private medical (at an assumed amount of [£1,000] unless You tell Us otherwise) or dental cover and all other payments and taxable or non-taxable emoluments payable to or receivable by the Applicant in respect of the Engagement.

**Services:** the recruitment services We will provide You with.

**We:** Mackinnon Bruce .

**You:** means the party to which an Applicant is introduced or which appoints us to provide the Services. (Us and Our shall have the equivalent meaning)

#### **2. Basis of contract**

2.1 We will agree with You whether we are providing a [“Contingency Appointment” Service or a “Retained Appointment” Service] before the Introduction occurs.

2.2 The Contract comes into existence on the earliest of: (i) Us confirming acceptance of your instructions in writing, (ii) You interviewing an Applicant (or arranging to) or (iii) You offering an Applicant an Engagement. These Conditions apply to the exclusion of any other terms that You seek to incorporate and can only be varied by one of our directors in writing.



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### 3. Supply of Services

3.1 We will use reasonable endeavours to introduce suitable Applicant(s) to you, however, as you will appreciate, we cannot guarantee to find a suitable Applicant or warrant their suitability.

3.2 We will try to meet any performance dates agreed, but they are estimates only and time will not be of the essence.

### 4. Your obligations

4.1 You are responsible for satisfying yourself as to the suitability of any Applicant and for ensuring they have the necessary skills and experience for the vacancy. You are also responsible for carrying out any checks You feel are necessary, including taking up references, checking medical requirements and the validity of qualifications, obtaining any work and/or other permits and for checking the Applicant's eligibility to work in the relevant country.

4.2 You will tell Us as soon as:

(a) You make an offer of an Engagement to an Applicant; and

(b) when the offer is accepted (or upon the start of an Engagement (whichever happens first)),

and will provide full details of the Remuneration and copies of related documents. If you don't, we will charge Our Fee on the typical level of remuneration applicable for that position with regard to any information you have supplied and/or comparable positions in the market.

4.3 If We cannot carry out any of our obligations under the Contract because of anything You do or don't do, we may suspend performance of the Services until You remedy that default.

### 5. Exclusivity

You engage Us on an exclusive basis to provide the Services and You will not engage another party in respect of the same vacancy without getting our written agreement first.

### 6. Fees and payment

6.1 The Fees for the Services are:

(a) Contingency Appointment: [35%] of Candidate's first year Remuneration, invoiced when the offer letter of Engagement from the Client is signed by the Applicant or the Applicant commences work, whichever is earlier; and

(b) Retained Appointment: [30%] of Candidate's first year Remuneration, invoiced [one-third when We start work with You and two-thirds when the offer letter of Engagement from the Client is signed by the Applicant] (or if earlier, when the Applicant commences work), with a [minimum Fee of £10,000 if the Remuneration is less than £25,000 per annum]. If the Engagement is for less than 12 months, the Remuneration will be applied pro rata to calculate the Fee. Cancellation clauses do apply and are outlined in Clauses 6.5 and 6.6.

6.2 Where You ask Us to arrange travel for an Applicant to meet You, We will add Our standard rate for this service to Our invoice.



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6.3 Invoices are payable within [30 days] of the date of the invoice in full without any set off or deduction and in cleared funds. All amounts are subject to VAT where applicable.

6.4 If an estimated Remuneration was used for calculating the initial invoice, the final invoice will be calculated to reflect the actual Remuneration package accepted by the Applicant.

6.5 If you have a Retained Appointment and materially alter or put it on hold for more than 12 weeks, you will pay a cancellation fee of [50%] of the balance of the Fees not invoiced at that date.

6.6 If you have a Retained Appointment you shall do so with exclusivity as per Clause 5 If, despite the provisions of this Section, You Engage a person, other than an Applicant, to fulfil a role in relation to which it has engaged Us (irrespective of whether the person is sourced from a third party, by You or whether the person is or was previously Engaged by You or otherwise) it shall, in relation to such Appointment, pay Us 100% of the remaining Fee that would have been payable had such person been Introduced Us. The remaining fee will be outlined in the proposal.

6.7 If You introduce or pass details of an Applicant to another party (directly or indirectly and including to a member of Your group) and that party Engages the Applicant, you will tell Us straight away and pay Us the Fees set out in clause 6.1 (unless the Engagement takes place more than 12 months after (i) We introduced the Applicant to You or (ii) the date of the Applicant's last interview with You, whichever is the later).

6.8 You will pay the Fees if within 12 months of the Introduction You:

(a) reject an Applicant, withdraw Your offer or the Applicant rejects Your offer of Engagement, but You (or a member of your group) later Engage the Applicant;

(b) (or a member of your group) Engage an applicant in any vacancy or role even if the role is different to Your initial requirement; or

(c) engage a person, other than an Applicant, to fill the vacancy You appointed us in respect of (irrespective of whether that person approached You directly, was introduced by a third party or if You have ever Engaged that person).

6.9 You will pay any expenses We reasonably incur in connection with the Services, including advertising, hotel and travel and subsistence regardless of whether an Applicant is Engaged. Hotel expenses will be at an appropriate level and motor vehicle costs will be recharged at the AA mileage rate.

## **7. Replacement Applicants**

If an Engaged Applicant leaves you within the first [8 weeks] of their Engagement, We use reasonable endeavours to introduce a replacement Applicant for no additional Fee, assuming that (i) all Our invoices have been paid in accordance with clause 6 above, (ii) You tell us within 7 days of the departure, (iii) the termination is lawful, not due to redundancy, constructive dismissal or a material change in the job description and (iv) the Engagement is for a fixed period of more than 8 weeks.

## **8. Restrictions on Engaging Our Staff**

You will not employ or try to employ Our members of staff. However, if a member of Our staff accepts an Engagement with You within three months of leaving Our employment, then you will pay Our Fees as if We had Introduced that person, subject to a minimum fee of [£15,000].



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### 9. Intellectual property rights

We own all intellectual property rights arising out of the Services (other than intellectual property rights in any materials provided by You).

### 10. Data protection and data processing

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause

10 is in addition to a party's obligations under the Data Protection Legislation.

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, We are the data controller and you are the data processor (as defined in the Data Protection Legislation).

10.3 We will ensure that We have all necessary consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to You for the duration and purposes of the Contract.

10.4 Without prejudice to the generality of clause 10.1, You will, in relation to any Personal Data You process in connection with the Contract:

(a) process that Personal Data only on Our written instructions unless You are required by the laws of any member of the European Union or by the laws of the European Union applicable to Us to process Personal Data (Applicable Data Processing Laws). Where You rely on laws of a member of the European Union or European Union law as the basis for processing Personal Data, You will promptly notify Us of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit You from notifying Us;

(b) ensure that You have appropriate technical and organisational measures in place, reviewed and approved by Us, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss, disclosure or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential and are aware of and understand the processes required to keep that Personal Data secure and confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless You have our prior written consent and the following conditions are fulfilled:

(i) You or We have provided appropriate safeguards in relation to the transfer;



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- (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (iii) You comply with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) You comply with reasonable instructions We notify You of in advance with respect to the processing of the Personal Data;
- (e) assist Us in responding to any request from a Data Subject and in ensuring compliance with Your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify Us on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.5 We do not consent to you appointing any third-party processor of Personal Data under the Contract.

### **11. Limitation of liability**

11.1 We do not give any warranties (express or implied) as to the accuracy of any information provided in relation to an Applicant.

11.2 We are not liable to You for any loss, damage, or liability You incur or suffer arising directly or indirectly from (i) an Engagement, (ii) Your use of any information We provided in relation to an Applicant, (iii) failure of the Applicant to meet Your requirements for which s(he) was Introduced, (iv) any act or omission of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise or (v) any loss, injury, damage, expense or delay incurred or suffered by an Applicant.

11.3 We do not limit any liability which cannot legally be limited. Our total liability to You will not exceed the Fees payable in respect of the Contract. No liability is accepted for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or indirect or consequential loss.

11.4 You will indemnify Us from and against all loss, damage or liability suffered by Us resulting from (i) a breach of this Contract by You, (ii) any loss, damage or liability suffered by an Applicant or by anyone arising from the acts and omissions of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise during or arising directly or indirectly out of the Contract and/or an Engagement.



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### 12. Termination

12.1 Either of Us can terminate the Contract immediately by giving written notice if the other (i) commits a material breach of any term of the Contract (and if such a breach can be remedied, fails to remedy that breach within 7 days of being notified in writing to do so) or (ii) becomes insolvent or ceases to carry on its business.

12.2 We can terminate the Contract immediately by giving You written notice if You (i) do not pay any amount under the Contract on the due date for payment or (ii) breach clause 5 above.

### 13. Consequences of termination

13.1 Any outstanding invoices and interest (and any Fees not yet invoiced) are immediately payable and you will return all of our materials on termination of the Contract.

13.2 Termination or expiry of the Contract will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract will remain in full force and effect.

### 14. General

14.1 Interpretation. A reference to a statute is to it as amended or re-enacted and includes all subordinate legislation. Any words following terms like include, in particular, for example are illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

14.2 Force majeure. Neither party will be in breach of the Contract if a failure results from circumstances beyond its reasonable control.

14.3 Assignment and other dealings. We may assign, charge, subcontract or deal in any other manner with any or all of our rights and obligations under the Contract.

14.4 Confidentiality. You will only use information We provide for internal recruitment purposes and will keep the information strictly confidential, not publish all or any part of the information, or allow any Applicant to see all or any part of the document, or divulge or disclose all or any part of the information to any third party and permit access to the information only to those of Your officers or employees who need to know the information and You will ensure that Your officers and employees also comply with the provisions of this clause. We both agree that at any time during the Contract and for a period of five years after termination, not to disclose to any person any confidential information concerning the business, affairs, clients or employees of the other party.

14.5 Entire agreement. The Contract constitutes the entire agreement between Us and supersedes and extinguishes all previous agreements, promises, warranties and representations between Us, whether written or oral. We both acknowledge that we do not rely on any statement, assurance or warranty that is not set out in the Contract and agree that neither of us will have a claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.



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14.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

14.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of the Contract.