

## Terms and conditions of business for permanent & fixed term placements

### 1. Scope of this Agreement

- 1.1 These Terms and Conditions shall apply to:
  - a. any Business proposed or undertaken by RW for the Client; and
  - b. the Assignment, engagement or employment or other use by the Client of a Temporary Worker Introduced by RW.
- 1.2 In the absence of written confirmation, the use by the Client of any CV (or the details therein) provided by RW or the employment or engagement (or any offer of such) in any capacity, of any Candidate Introduced by RW will constitute acceptance by the Client of these Terms and Conditions.
- 1.3 These Terms and Conditions together with any documents referred to within them shall constitute the entire agreement between the Parties in relation to the Business, Assignment and/or the employment, engagement or other use by the Client of a Temporary Worker Introduced by RW to the exclusion of all other agreements including any other terms and conditions of business or purchase conditions that the Client may attempt to impose in respect of the provision of the Business.

### 2. The Placement

- 2.1 RW shall use reasonable skill and care in the sourcing and Introduction of Candidates to the Client.
- 2.2 The Client shall provide RW with details of the particular Placement, including the anticipated Salary Package, job description and any other information reasonably necessary to enable RW to assess the suitability of a Candidate for that Placement.
- 2.3 Insofar as a Candidate or a third party provides details (whether in the form of academic or professional qualifications, professional background, experience or the like) relating to the Candidate, RW provides no warranty or representation as to the accuracy of such information and RW will not be liable to the Client for any loss (including direct loss, indirect or consequential loss, loss of profit, loss of anticipated revenue, loss of reputation or regulatory fines) or damage, nor shall RW bear any responsibility for any Client legal costs and expenses associated with such matters, whether arising directly or indirectly, as a result of such inaccurate or misleading information and the Client acknowledges that it is their sole responsibility and obligation to undertake its own investigations, to verify any information provided in respect of that Candidate and ensure that the same is accurate and correct.
- 2.4 Where the Client has instructed RW to approach a particular Candidate on the Client's behalf, the Client shall indemnify and keep RW indemnified against all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal and professional costs and expenses suffered or incurred by RW as a result of claims made against RW in connection with such instruction provided that RW has complied with its obligation to use reasonable skill and care and has not acted negligently or illegally in such regard.
- 2.5 RW gives no representation or warranty that any Candidate is or will be willing and/or available to accept any Placement.
- 2.6 RW will not be liable for any and all losses, including direct losses, indirect or consequential losses, loss of profit, loss of actual or anticipated savings, loss of anticipated revenue, loss of reputation or regulatory fines, liabilities, costs and expenses (including legal costs and expenses) incurred by the Client arising from the Candidate's acts or omissions including their acts or omissions in the performance of their employment (whether on a permanent, Part Time Placement or Fixed Term Placement basis) or engagement with the Client.
- 2.7 The Client acknowledges that the final decision to employ or engage the Candidate rests with it.
- 2.8 The Client will make RW aware of any security and/or health and safety requirements which RW's staff and/or the Candidate must observe whilst at the Client's premises.
- 2.9 RW shall not use the Client's name, logo and trademarks within advertising for the Placement without the Client's prior written consent. Nothing in this provision shall create any rights of ownership (whether registrable or not) in favour of RW over the intellectual property of the Client.
- 2.10 RW shall not be responsible for arranging work permits, insurance or other incidental requirements of employment or engagement for the Candidate.

### 3. Fees

- 3.1 The Placement Fees for Placements shall be calculated as a percentage of the Salary Package of the Candidate. This percentage shall be agreed between the Parties and confirmed by RW in writing (including by email) or verbally (then confirmed by email). In the absence of such agreement, where a Placement is accepted by the Candidate and such acceptance has been communicated to the Client by the Candidate or RW, RW shall be entitled to charge Placement Fees calculated on its standard percentages as set out in the Fee Schedule. For the avoidance of doubt, where an offer of employment or engagement is accepted by the Candidate but (through no fault of the Candidate) no employment or engagement results, the Placement Fees shall still be due.
- 3.2 The Placement Fees for Fixed Term Placements and Part Time Placements shall be calculated against the equivalent annual full time Salary Package pro-rated to the length of the Fixed Term Placement or Part Time Placement but otherwise calculated in accordance with the provisions of clause 3.1.

- 3.3 Placement Where RW is instructed to recruit for a Permanent Placement or Fixed Term Placement and such Placement is ultimately hired as a Part Time Placement, RW shall be entitled to charge Placement Fees based on the Salary Package which would have been applicable had the Placement been made as a Permanent Placement in accordance with the Client's original instruction. Placement Fees are exclusive of any Value Added Tax which shall be charged by RW at the prevailing rate.

**4. Additional Costs**

- 4.1 Any Additional Costs will only be incurred by or with the Client's approval and charged at rates agreed between the Parties in writing. Such Additional Costs will be payable by the Client, even if the Placement to which such Additional Costs are attributable is not secured.

**5. Time For Payment**

- 5.1 Save as provided in clause 6.2, the Client shall pay all RW invoices (including those for Additional Costs) in full, within fourteen (14) days of the date of a RW invoice without any right of set off.
- 5.2 Except as otherwise agreed in writing between the Parties, all Placement Fees shall be invoiced following the Candidate accepting an offer from the Client. The Candidate is deemed to have accepted an offer from the Client when such acceptance is communicated in writing (including by email) by the Candidate or RW to the Client. RW shall be entitled to invoice any and all Additional Costs immediately after they have been incurred by RW.
- 5.3 The Client is deemed to have accepted an RW invoice if no dispute is raised in respect of the same, within seven (7) days of the date of such invoice. All disputes shall be dealt with promptly, in good faith and escalated to the appropriate levels within RW. For the avoidance of doubt, no disputed payment shall permit the Client any right of set off against future invoices or permit the Client to fail to discharge any other RW invoice issued pursuant to these Terms and Conditions.
- 5.4 Any third party costs and/or expenses (including legal fees and other professional fees) incurred by RW in recovering amounts overdue pursuant to these Terms and Conditions shall be payable by the Client.

**6. Retained Searches**

- 6.1 Placement Fees for retained searches only shall be calculated on the basis of the Salary Package and invoiced to the Client in three stages:
- a. thirty three percent (33%) of the Placement Fee on RW's agreement to undertake the Business (based on an estimate of the Salary Package);
  - b. thirty three percent (33%) of the Placement Fee when the short-list of Candidates is presented to the Client by RW or thirty (30) days after RW's agreement to undertake the Business whichever is the sooner (based on an estimate of the Salary Package); and
  - c. the balance (if applicable, adjusted for any variance between the estimated and final Salary Package) on the first day of the Client's employment of the Candidate.
- 6.2 Placement Fees for retained searches are non-refundable. If the Client withdraws the Placement or an offer of employment or engagement before the Candidate commences working for the Client, all three (3) stages of fees specified in clause 6.1 will become payable immediately.

**7. Fixed Term Extensions & Conversions**

- 7.1 For Fixed Term Placements, if:
- a. a new fixed term commences within twelve (12) months from the end of the previous fixed term, and/or the original fixed term (or any subsequent fixed term) is extended, a further fee will be calculated in accordance with the provisions of clause 3.2; or
  - b. the Candidate accepts permanent employment with the Client within twelve (12) months of the end of the last fixed term, a further fee will be calculated in accordance with the provisions of clause 3.1; or
  - c. the Candidate accepts a temporary engagement with the Client (either directly engaged by the Client or engaged on a contract for services with RW or any third party) within twelve (12) months of the end of the last fixed term, a further fee will be calculated in accordance with RW's standard terms and conditions of business for temporary assignments accessible here: <https://www.robertwalters.co.uk/content/dam/robert-walters-redesign/country/united-kingdom/files/policies/uk-terms-and-conditions-of-business-for-temporary-assignments.pdf>
- 7.2 In each circumstance established pursuant to clauses 7.1 a, b and c, the Client must notify RW immediately in writing of the occurrence of such circumstance.

**8. Additional Circumstances Where Placement Fees Will Be Due**

- 8.1 The Client shall inform RW as soon as reasonably practicable and in any event within seven (7) days of the occurrence of any of the events envisaged pursuant to the provisions of this clause 8.1, and shall pay the Placement Fee that would have been due to RW for a Placement where:
- a. although no employment or engagement occurs initially, a Candidate accepts an offer of employment or engagement with the Client within twelve (12) months of the Final Communication; or
  - b. irrespective of whether or not an employment or engagement resulted from the Introduction of a Candidate by RW to the Client, the Candidate is within twelve (12) months of the Final Communication (i) offered employment or an

engagement with the Client; or (ii) is introduced by the Client to a third party and such Introduction results in an offer of employment or an engagement. For the avoidance of doubt, this Clause 8.1 b shall apply where such offer is made through another recruitment agency, any third party or by the Client direct.

- 8.2 The notification to RW under clause 8.1 shall include details of the start date of the employment and full details of the Salary Package agreed.

## **9. Replacement Candidates**

- 9.1 No rebate of Placement Fees shall be made. Should the employment or engagement of a Candidate terminate within a period of nine (9) weeks (including the Candidate's period of contractual notice with the Client) from the Candidate's employment commencement date with the Placement, RW shall use reasonable endeavours to seek a replacement Candidate on the condition that:
- a. the Candidate leaves of their own volition and not due to any redundancy measures, change in job description or change in work conditions;
  - b. RW's invoices have been settled in accordance with these Terms and Conditions;
  - c. the Client has complied with its obligations to the Candidate including its obligations under any relevant law;
  - d. the request is given exclusively to RW to replace the Candidate;
  - e. the replacement role is the same as the initial Placement; and
  - f. RW is informed in writing that the Candidate is no longer to be engaged by the Client within fourteen (14) days of such decision being made.
- 9.2 RW only offers such replacement for the initial Candidate placed with the Client in whatever capacity. No replacement for the replacement Candidate in whatever capacity shall be provided.
- 9.3 If the Salary Package of the replacement Candidate changes from that provided to the original Candidate, the invoiced amount will be adjusted accordingly.
- 9.4 The offer of searching for a replacement Candidate (where the circumstances noted in clause 9.1 are satisfied) will be valid for a period of two (2) months from the date of termination of the initial Candidate, after which RW is not obliged to offer such a replacement.
- 9.5 This clause 9 shall constitute the exclusive remedy for the Client with regards to a Candidate's employment terminating in the circumstances set out in clause 9.1. This clause 9 shall only apply to Permanent Placements.

## **10. Confidentiality and Data Protection**

- 10.1 Each Party will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing Party, in confidence and will not disclose such information without the consent of the other Party unless required by law or a court of competent jurisdiction, or it has already been made available to the public other than through a breach of this clause. Any CVs or details of the Candidate provided to the Client by RW shall remain the confidential information of RW.
- 10.2 Each Party shall comply with its data protection obligations as more particularly set out in the Data Protection Legislation that applies to that Party. The Parties agree that they will be classified under the Data Protection Legislation as 'Data Controllers in Common' and have agreed to both comply with the Data Sharing Protocol relating to the data sharing referred to in these Terms and Conditions, which is accessible here: <https://www.robertwalters.co.uk/about-us/gdpr.html>. The Client shall indemnify RW against all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal and professional costs and expenses suffered or incurred by RW arising out of or in connection with any third party claims (including those of Candidates) caused by the misuse of a Candidate's personal data by the Client or its Subsidiaries, any company within its group of companies or the employees, directors, agents or contractors of each.

## **11. Anti-bribery**

Neither Party shall make or receive any bribe or other improper payment. Each Party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and each shall ensure that all of that Party's personnel so comply.

## **12. Tax Evasion**

The Client shall not engage in any activity which would constitute either a UK tax evasion facilitation offence under section 45(1) of the UK Criminal Finances Act 2017 (the "Act"), or a foreign tax evasion facilitation offence under section 46(1) of the Act. The Client shall promptly report to RW any request or demand from a third party to facilitate the evasion of tax in connection with the performance of these Terms and Conditions.

## **13. Modern Slavery**

Both Parties undertake that neither Party nor any of its officers, employees, agents or subcontractors has committed an offence under the Modern Slavery Act (a "MSA Offence") or is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act. Each Party shall notify the other immediately in writing if it becomes aware or has reason to believe that it has potentially breached its obligations under this clause 13.

## **14. Law and Jurisdiction**

- 14.1 Any dispute arising out of or in connection with these Terms and Conditions, including any question regarding its

existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

14.2 These Terms and Conditions shall be governed by and construed in accordance with the laws of England.

## **15. General**

- 15.1 Neither Party shall be liable to the other under or in connection with these Terms and Conditions or any contract made upon them for any indirect or consequential loss, loss of profits, loss of business, loss of revenue, loss of anticipated savings, loss of reputation or regulatory fines. Nothing in these Terms and Conditions limits any warranty, exclusion or limitation of liability or right imposed by statute or regulation to the extent that it cannot lawfully be excluded or limited.
- 15.2 Subject to the extent that a liability cannot be lawfully excluded or limited, the maximum liability of each Party to the other in respect of any Placement shall be limited to one hundred and twenty percent (120%) of the Placement Fees which are payable.
- 15.3 The Client will not during the course of RW's engagement under these Terms and Conditions and for a period of twelve (12) months thereafter (either on its own account or for any other individual or organisation), directly or indirectly induce, entice or solicit away or try to induce, entice or solicit away from RW any individual who is an employee, director or consultant of RW and who has worked in respect of the Business at any time during the period of RW's engagement. If the Client employs or engages any person in breach of this provision, the Client shall pay to RW on demand the sum equivalent to fifty percent (50%) of the Salary Package of such person. The Parties agree that this is a genuine pre-estimate of loss.
- 15.4 If any clause is held by a court of competent jurisdiction to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other provisions of these Terms and Conditions.
- 15.5 If a Party is prevented in the performance of its obligations under these Terms and Conditions by circumstances that are beyond the control of that Party (acting reasonably) such as acts of God, fire, floods, lightning, war, revolutions, acts of terrorism, laws or actions taken by governmental or public authorities and riots or civil commotion then that Party will not be liable for what would otherwise have been a breach of its obligations under these Terms and Conditions.
- 15.6 No failure or delay by either Party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of any clause will be effective unless confirmed in writing to the other Party and in the case of RW, by a director of RW.
- 15.7 Those clauses which, by their nature, are intended to continue to have effect following termination or expiry of these Terms and Conditions shall survive and continue to bind the Parties.
- 15.8 A person who is not a Party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit from or enforce any term of these Terms and Conditions.
- 15.9 Any variation to these Terms and Conditions, including the attempted introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of RW (unless these Terms and Conditions expressly provide to the contrary).

## **Definitions and Interpretation**

In these Terms and Conditions the following words shall have the following meanings unless the context dictates otherwise.

**"Additional Costs"** means, for example, any advertising campaign, additional pre-employment screening requirements or the like for a specific Assignment, Payroll Fees or any other agreed supplementary charges.

**"Bribery Laws"** means the Bribery Act 2010 and any similar or equivalent legislation in any other relevant jurisdiction.

**"Business"** means work performed by RW in relation to Permanent Placements, Part Time Placements or Fixed Term Placements including, RW providing CVs (solicited or unsolicited), RW receiving instructions from the Client for a Placement, long/short listing of Candidates, Introducing a Candidate, RW's arrangement of or conducting interviews with Candidates or any other act either directly or indirectly relating to the sourcing or supply of a Candidate.

**"Candidate"** means an individual Introduced by RW to the Client.

**"Client"** means you or your ultimate holding company and all of its Subsidiaries.

**"CV"** means curriculum vitae.

**"Data Protection Legislation"** means the European Union's General Data Protection Regulation (2016/679) (GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to the processing of personal data and privacy as amended, re-enacted, replaced or superseded from time to time, including any guidance and codes of practice issued by the applicable supervisory authority.

**"Fee Schedule"** means the document which can be found at <https://www.robertwalters.co.uk/content/dam/robert-walters-redesign/country/united-kingdom/files/policies/rw-uk-perm-ftc-terms-conditions-fees.pdf> or any other document or written (including electronic) confirmation of the fees as agreed between the Parties.

**"Fixed Term Placement"** means any Candidate Introduced to the Client who is employed or engaged directly by the Client on a fixed term contract.

**"Final Communication"** means the latest date on which Parties communicated in respect of a Candidate.

**“Introduced”** means the communicating (through whatever medium) of a Candidate's CV, a long or short list of Candidates and/or details of a Candidate by RW to the Client or any other verbal or written communication between RW and the Client that enables the Candidate to be identified and “Introduction”, “Introducing” and “Introduce” shall be construed accordingly.

**“Modern Slavery Act”** means the Modern Slavery Act 2015.

**“Parties”** means collectively RW and the Client and each individually shall be referred to as a “Party”.

**“Part Time Placement”** means any Candidate Introduced to the Client who is employed directly by the Client on an indefinite basis with a reduction in the usual working day or week.

**“Permanent Placement”** means any Candidate Introduced to the Client who is employed directly by the Client on an indefinite basis.

**“Placement”** means a position or role to which a Candidate is recruited for, or may be or is appointed to with the Client, whether on a permanent, fixed term or part time basis.

**“Placement Fees”** means the fees due to RW in relation to a specific Placement calculated in accordance with these Terms and Conditions.

**“RW”** means Robert Walters Operations Limited, a company incorporated in England and Wales whose registered office is at 11 Slingsby Place, St Martin's Courtyard, London WC2E 9AB.

**“Salary Package”** means the annual anticipated gross remuneration package for a Placement, which includes gross annual salary, applicable benefits for which there is a cash equivalent paid to the Candidate, profit share, commission, bonus, living allowances, travel allowances, overseas allowances and joining inducements. For the purposes of calculating Placement Fees, the provision of a car to the Candidate is valued at £5,000 per annum.

**“Subsidiary”** shall have the meaning more particularly given in section 1159 of the Companies Act 2006 and the term “Subsidiaries” shall be construed accordingly.

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