

Terms of Business

1. Definitions and the Contract

These Terms and Conditions of Business are between NI Resourcing Ltd (the "Consultancy") and the person, partnership, firm or corporate body requiring the services of the Consultancy (the "Client"). These terms constitute the contract between the Consultancy and the Client and the Client is deemed to have accepted these Terms of Business by interviewing a Candidate introduced by the Consultancy or by agreeing to engage or use a Candidate in a position of employment or work in whatever capacity within a twelve-month period. For the purposes of these Terms of Business "introduced" (or "introduction") shall be taken to be the provision of any details either in writing, electronically (e.g. email) or verbally of a Candidate to the Client by the Consultancy.

2. Payment Terms

The Client agrees to notify the Consultancy immediately that a Candidate accepts an engagement and to pay the fee due to the Consultancy, within 7 days of the invoice date.

3. Fees

3.1 The fee payable to the Consultancy by the Client for the introduction of a Candidate is calculated as a percentage of the Candidate's remuneration as defined in paragraph 3.4 below, subject to a minimum fee chargeable of £1000 + VAT.

Remuneration (per annum)	Fee
Up to £19,999	15%
£20,000 - £34,999	17.5%
£35K+	20%

The fee applies to total remuneration as defined in paragraph 3.4 below. All fees are subject to VAT at the applicable prevailing rate.

3.2 For 'Retained Assignments' which are deemed to be those where the client has given a specific exclusive instruction to the Consultancy to identify a suitable candidate for the Client's vacancy, the fee structure will be as follows: 25% of the total assignment fee on the Consultancy's acceptance of the Client's instruction; 25% on the Client's acceptance of the Consultancy's shortlist, and; 50% on the Candidate's acceptance in writing of the Client's offer of employment (this may be deferred until the commencement of the Candidate's employment at the discretion of the Consultancy). In all cases payment is due within 7 days of each invoice date.

3.3 In circumstances where a retained assignment is undertaken and the value of final remuneration cannot be established exactly, the Client and Consultancy will come to an agreement on an approximate value, which shall be agreed in writing by both parties and form the basis for the fee calculation at acceptance of the assignment and shortlist stages. The final fee payment on the Candidate's acceptance of the Client's offer of employment shall be calculated to ensure that the total fee paid is equivalent to that which would have been paid if the exact final remuneration had been known at the outset of the assignment.

3.4 Remuneration is defined as follows: the Candidate's aggregate gross annual taxable emoluments that become due following their engagement by the Client (where "engagement" shall be taken to be the employment, in any capacity of the Candidate by the Client whether formally or informally), including salary, bonuses, car allowance and any other allowances. When a company car, rather than a financial car allowance is provided as part of the overall remuneration package this shall be valued as additional remuneration of £3,000 regardless of the actual value of the benefit. Where there is no defined remuneration (or the information is not made available) then for the purposes of fee calculation the remuneration will be taken to be equivalent to the Candidate's last 12 months remuneration from employment plus 10%. Where this is not ascertainable due to lack of information a set fee of £5,000 will be used instead.

4. Fee Refunds and Replacements

4.1 If a candidate leaves the employment of a client within 12 weeks of their starting date then we will endeavour to replace that candidate in the first instance or offer a fee refund should a replacement not be found, based on the following conditions. To qualify for a fee refund or a free replacement the Client must have paid the Consultancy's fee within 7 days of the invoice date, the Consultancy must be notified in writing or electronically (e.g. by email) within 7 days of termination of employment and the Client must not engage in any other activity to find a suitable replacement independently of the Consultancy. If these conditions are met the Consultancy will initially seek to provide a replacement at no additional cost to the Client.

4.2 If a replacement is not introduced within a 4 week period from the notification date of the previous Candidate leaving the employment of the Client, the Client shall receive a refund of the fee paid which is based on the length of the service of the candidate.

Service prior to termination	Percentage of fee refunded
Up to 2 weeks	100%
3-4 weeks	75%
5-6 weeks	50%
7-8 weeks	25%

No refund is due should the replacement also leave the Client's employment within an 8 week period.

4.3 This refund policy does not apply when the Client makes a candidate redundant.

5. Introductions and Engagements

5.1 Should the Client or any subsidiary or associated company of the Client subsequently re-engage the Candidate, or use the Candidate, in any capacity, within the period of 12 months from the date of termination a full fee in accordance with paragraph 3 above will become payable. In such circumstances no refund is applicable regardless of the subsequent length of the Candidate's employment.

5.2 All introductions by the Consultancy to the Client are deemed to be confidential. If the Client should pass details of introduced Candidates to a third party which results in the engagement, by that third party of a Candidate initially presented to the original Client, whether that be in a temporary or permanent capacity, then the Client will be deemed liable to pay the Consultancy their standard fee as per these terms of business as if the Client had engaged the Candidate directly.

5.3 The Client will be liable to pay a fee as per the Consultancy's relevant Terms of Business in respect of any Candidate engaged in any capacity (even if it is not in the role for which the Candidate was originally presented to the Client) by the Client as a consequence of, or resulting from, an introduction by or through the Consultancy, whether direct or indirect, during the preceding 12 month period.

5.4 Where any Candidate introduced by the Consultancy to the Client is already known to the Client as a result of direct contact or contact through another consultancy, the Client shall notify the Consultancy of that fact within 3 working days from the Introduction, failing which the Client will be liable to pay a fee in the event of its engagement of that Candidate within 12 months of the Introduction.

6. References and Suitability

6.1 The Consultancy will attempt to ensure the suitability of any applicant introduced to the Client. The Consultancy does not, however, undertake to take references on Candidates introduced or check/confirm academic and professional qualifications. The Client must, therefore, take all steps they deem necessary to establish the suitability of any Candidate and shall be responsible for taking up any references, checking legal eligibility to work within the UK, facilitating medical examinations or confirming professional and academic qualifications as provided by the Candidate and/or the Consultancy before engaging such Candidate.

6.2 The Consultancy shall not be liable to the Client under or in connection with this Agreement for any indirect or consequential loss or damage or any loss of or damage to profit, revenue, savings, use, contract, goodwill of business, in each case howsoever caused, including without limitation by reason of misrepresentation (whether made prior to or in this Agreement), negligence, other tort, breach of contract or breach of statutory duty.

7. Variations to the Terms of Business

No variation can be made to these terms without the written consent of the Director of the Consultancy.

8. Interest on Fees

We reserve the right to charge interest at a flat rate of 2% per month or part month on overdue debts (i.e. those invoices not paid within 7 days of the invoice date). We also reserve the right to recover any legal fees associated with debt recovery.

9. Limitation of Liability

Where the Consultancy has failed to provide a Service, if it then provides that Service (or arranges for it to be provided within 28 days after the Client has notified it of such failure) such provision will be the Client's sole remedy in respect of that failure.

Save as expressly set out in this Deed, all warranties and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Deed.

9.1 The Consultancy's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to two times the total fees paid up to date on which that liability arose.

9.2 The Consultancy shall not be liable to the Client for any loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or for any other special, consequential or indirect losses whatsoever and howsoever caused.

Nothing in these terms excludes or limits the Consultancy's liability for (a) death or personal injury caused by the Consultancy's negligence; (b) fraud or fraudulent misrepresentation; and (c) any other matter which it would be illegal for the Provider to exclude.

9.3 Where Services are provided by reference to any designs, specifications or drawings supplied by or on behalf of the Client, the Consultancy will be entitled to assume that these are correct and complete and reflect the Client's intentions. The Client shall indemnify the Consultancy against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world; any inaccuracy or error in those designs, specifications or drawings.

10. Dispute Resolution

10.1 All matters of disagreement under this Deed should be resolved by negotiation and discussion between the parties. The procedure set out in the following provisions of this clause 10 should only be applied in exceptional circumstances. Each party shall use its best endeavours to apply the terms of this Deed without the necessity for recourse to the following provisions of this clause 10.

10.2 Any dispute which has not been resolved between the parties' Representatives within 10 Business Days of the matter being raised by one to the attention of the other, may be escalated by either party to the chief executive of each party, by notice in writing. If the dispute has not been resolved within 28 days of such notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 20 days after the date of the ADR notice.

Escalation of a dispute or the commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

11 Entire agreement; Variation

11.1 This Deed contains the entire agreement between the parties with respect to its subject matter.

No variation of this Deed will be effective unless in writing signed on behalf of each party. The parties agree that such written variation may be effective though not executed as a Deed.

12 Severance

12.1 If any provision of this Deed shall become or shall be declared by any court of competent jurisdiction to be invalid, unlawful or unenforceable this shall not in any way impair or affect the validity, lawfulness or enforceability of any other provision of this Deed all of which shall remain in full force and effect.

13 Waiver

13.1 Failure by any party at any time to enforce the provisions of this Deed or to require performance by another party of any of the provisions of this Deed shall not be construed as a waiver of any such provision and shall not affect the validity of the Deed or any part thereof or the right of either party to enforce any provision in accordance with its terms.

14 Notices

14.1 Every notice, request or other communication under this Deed shall:

be in writing delivered personally or by prepaid first-class letter or sent by fax or electronic mail (**e-mail**) or any other written communication;

be deemed to have been received, in the case of a letter, when delivered personally or 48 hours after it has been sent by first-class post or, in the case of a fax or e-mail, on receipt of a legible copy by the recipient provided that any letter sent by fax, e-mail or personally which arrives after business hours or on a day which is not a Business Day shall be deemed to have been served at opening of business on the next Business Day; and

be sent to the Consultancy at its address stated above marked for the attention of the Chief Executive or (as the case may be) to the Client at the address stated above marked for the attention of the Chairman or (in each case) to such other address or fax number or e-mail address and/or marked for the attention of such other person in England as may be notified in writing by the relevant party to the other party with not less than 15 days' notice.

14.2 Each party consents to communication by the other party by e-mail and will have no claim in respect of any unauthorised disclosure of information sent by e-mail unless caused by the actual negligence of the sending party.

15 Contracts (Rights of Third Parties) Act 1999

15.1 No party to this Deed intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from applying to this Deed save to the extent that the Consultancy may permit its officers and employees to enforce provisions of this Deed which protect them from liability or confer an indemnity on them.

16 Law and Jurisdiction

16.1 This Deed and any non-contractual disputes or claims arising out of it or its subject matter or formation shall be governed by, and construed in accordance with, the law of Northern Ireland.

The parties irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed (including non-contractual disputes or claims).

Please note that if any provision or part thereof of these Terms of Business is held to be illegal or unenforceable the validity or enforceability of the remainder of the relevant provision and the Terms of Business shall not be affected.

