



Terms and Conditions of Balance Resourcing Search Limited (Terms and Conditions)

Balance Resourcing Limited (**'Balance Resourcing'**) acts as an employment agency under the Conduct of Employment Agencies and Business Regulations 2003

These Terms and Conditions shall be the sole terms and conditions that apply to any supply of services by Balance Resourcing to any Client. Terms and conditions on the Client's order form or other similar document shall not be binding on the Client and any request for Balance Resourcing to provide services to the Client including in particular interviewing or otherwise contacting any Person on behalf of the Client shall indicate unqualified acceptance of these Terms and Conditions.

1 Definitions

In these Terms and Conditions unless the context requires otherwise:

'Affiliate' means in relation to a company;

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;

'Agreement' means the agreement between Balance Resourcing and the client into which these Terms and conditions are incorporated;

"Client" means a person, company or other type of entity (including any Affiliate of any such person, company or other type of entity): (i) which uses the services of Balance Resourcing for the purpose of Engagement of a Person; or (ii) to whom Balance Resourcing otherwise provides services; or (iii) to whom Balance Resourcing introduces a Person;

"Confidential Information" means all information of a confidential nature disclosed by one party to the other including all information disclosed by Balance Resourcing to the Client relating to any Person including in particular the provision of the name and CV of any Person by Balance Resourcing to the Client and Balance Resourcing's methodology, know how, procedures and charging structure relating to its business;

"Engagement" means the engagement, appointment, employment, contracting, hire or other retention or utilisation of a Person by the Client or any Affiliate or associate of the Client on whatever basis whether temporary or permanent and whether or not the position is executive;



“Engagement Fees” means the fees payable by the Client in relation to Engagements as set out in Schedule 1 to these Terms and Conditions;

“Introduction” means the provision by Balance Resourcing to the Client of any information which identifies a Person;

“Person” means any person or persons that Balance Resourcing introduces to the Client including persons deemed to have been introduced to the Client pursuant to Clauses 7.3 and 7.4;

“Recruitment Retainer Period” shall have the meaning attributed to it in Schedule 1;

“Regulations” means The Conduct of Employment Agencies and Employment Business Regulations 2003;

“Retainer Fee” shall have the meaning attributed to it in clause 5.2;

“Search” means a search by Balance Resourcing for a Person to be engaged by the Client.

2 Interpretation

In these Terms and Conditions:

- 2.1 References to clauses and Schedules are references to clauses and schedules of and to these Terms and Conditions;
- 2.2 References to “introduction”, “introducing” and other similar expressions shall be construed as including without limitation any communication by Balance Resourcing to the Client in any format of any of the identity, name or Curriculum Vitae of any Person;
- 2.3 Any headings or subheadings are inserted for convenience only and shall not affect the construction of these Terms and Conditions;
- 2.4 All warranties, representations, indemnities, covenants, agreement and obligations are given or entered into jointly and severally; and
- 2.5 References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification).

3 Services

- 3.1 Balance Resourcing shall seek to identify and / or introduce Persons to the Client who are suitable for the Clients requirements.
- 3.2 Balance Resourcing makes no representation or warranty that Persons it introduces to the Client are suitable for the Client’s requirements. The Client acknowledges that it is essential for the Client to



undertake its own due diligence and make its own evaluation as to the appropriateness or suitability of the Person for the Client's requirements.

- 3.3 Any use by the Client of information provided to it by Balance Resourcing in relation to any Person shall amount to an acceptance of these Terms and Conditions.

4 Client Requirements / Specifications

In order to enable Balance Resourcing to provide the services the Client shall provide Balance Resourcing with information regarding its requirements which shall include the information listed in Schedule 2.

5 Fees and Expenses

- 5.1 The Client shall pay the Engagement Fees to Balance Resourcing in relation to each Engagement, irrespective of whether either the Client or the Person has previously rejected the other, provided the Engagement occurs within 18 months of the Person being introduced to the Client by Balance Resourcing.
- 5.2 In relation to each Search that the Client instructs Balance Resourcing to undertake it shall pay Balance Resourcing a retainer fee (the "Retainer Fee") in accordance with Schedule 1. Subject to clause 7.6 the Retainer Fee shall not be refundable in any circumstances (including in the event that the client does not Engage a Person introduced to it by Balance Resourcing) but it will be credited against any Engagement Fee that becomes payable in relation to that Search.
- 5.3 All sums due or payable by the Client to Balance Resourcing under these Terms and Conditions shall be paid free and clear of any deduction, set-off or withholding as may be required by law. No fees payable by the Client under these Terms and Conditions shall be rebated in any circumstances.
- 5.4 Invoices may be delivered by post, facsimile and /or email. All invoices shall unless otherwise specified in Schedule 1 be paid within 30 days of the date of delivery.
- 5.5 All sums payable by the Client under these Terms and Conditions are exclusive of Value Added Tax and accordingly the Client shall where VAT is applicable in addition pay Balance Resourcing, upon presentation of a valid VAT invoice such VAT as is chargeable in respect of the payment in question.
- 5.6 The Client shall pay the reasonable expenses that Balance Resourcing incurs in connection with any Search in accordance with Schedule 1 always provided Balance Resourcing shall obtain the Client's prior authorisation before incurring any individual expense item in excess of £100.

6 Interest

Without prejudice to any other rights or remedies which Balance Resourcing may have in respect of non payment of any sum due under these Terms and Conditions Balance Resourcing shall be entitled to charge the client interest on any amount that is overdue (incurred daily and compounded monthly) until such time as payment in cleared funds shall have been received by Balance Resourcing at the rate applicable from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.



7 Balance Resourcing Protection

- 7.1 If the Client or any Affiliate, associate, employee or agent of the Client should pass on information relating to any Person to any third party which passing of information leads to the engagement of that Person by such third party or another third party, the Client shall be liable to pay Balance Resourcing the Engagement Fee as if the Client had engaged the Person itself.
- 7.2 If the Client makes an offer to a Person in writing to engage him or her and the Person accepts the offer this shall constitute an Engagement on which the engagement Fee is payable by the Client irrespective of whether it decides to withdraw the offer of engagement to the Person save where such withdrawal is attributable to the fault of the Person.
- 7.3 The Client shall pay Balance Resourcing the Engagement Fee in the event the Client engages any other person that is introduced to it by a Person that Balance Resourcing has introduced to the Client as if that other person had been the Person and such other person shall be deemed to have been introduced to the Client by Balance Resourcing.
- 7.4 The Client shall pay Balance Resourcing the Engagement Fee in relation to a person that was identified or contacted by the Client if that person is treated as part of the search process undertaken by Balance Resourcing.
- 7.5 The Client shall pay Balance Resourcing the Engagement Fee in full in relation to a person that is engaged by the Client for the specified role (or a substantially similar role) in relation to which the Client has instructed Balance Resourcing to carry out a Search irrespective of whether the person that was engaged by the Client was introduced to the Client by Balance Resourcing, to the extent such person is engaged within twelve months of the Search undertaken by Balance Resourcing.
- 7.6 In the event that Balance Resourcing should cancel a Search within 45 days of the instruction to initiate the Search being given to it by the Client otherwise than by reason of a breach or failure to perform by the Client, Balance Resourcing shall promptly repay any Retainer Fee that it may have received from the Client in relation to that Search.
- 7.7 In consideration of Balance Resourcing providing services to the Client, the Client undertakes not to interfere with or endeavour to entice away from Balance Resourcing any senior employee or management staff of Balance Resourcing for as long as Balance Resourcing is providing services to the Client and for a period of 18 months following the termination of the provision of such services.

8 Liability

- 8.1 Neither Balance Resourcing nor any director, employee or agent of Balance Resourcing shall be in any way liable for any loss, damage, costs, claims, expenses and liabilities, howsoever and whensoever arising, and whether direct, indirect or consequential, arising from or connected in any way with the introduction of any Person to the Client or the Engagement of any such Person by the Client other than those losses, damages, costs, claims, expenses and liabilities caused by its gross negligence or wilful default (and in such cases its liability shall be limited to return of fees received by Balance Resourcing in respect of the Engagement concerned).



- 8.2 In particular and without prejudice to the more general limitation set out in clause 8.1 Balance Resourcing shall not be liable for: (i) any act or omission of the Person whatsoever; or (ii) the Person not meeting the Client's requirements in any respect. The client shall do their own due diligence on the Person.
- 8.3 Nothing in these Terms and Conditions shall exclude restrict or limit the liability of Balance Resourcing for death or personal injury caused by its negligence, its fraudulent misrepresentation or any liability which it is not as a matter of law allowed to exclude.

9 Force Majeure

If and to the extent that either party is prevented or delayed by any circumstances beyond its reasonable control which were not foreseeable at the date of the contract into which these Terms and Conditions are incorporated including without prejudice to the generality of the foregoing strikes, civil commotion, riots, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, epidemic or other natural physical disaster ('force majeure'), from performing any of its obligations under the contract into which these Terms and Conditions are incorporated it shall be relieved of liability for the failure to perform such obligations or the delay in performing such obligations with effect from the date it gives notice to the other party of the occurrence of such force majeure specifying how it is anticipated the force majeure will affect the performance of the notifying party's obligations. If the event of force majeure continues for more than 2 months following notice of the occurrence of such event the party that is not affected by force majeure may terminate the contract to which these Terms and Conditions apply by notice in writing to the party that is affected by force majeure.

10 Confidentiality

- 11.1 Each of the parties shall keep confidential and shall not disclose to any other person nor use for any purpose except the purposes contemplated hereunder (the Engagement by the Client of a Person), any Confidential Information obtained from the other party save to the extent it:
- (i) is required to be disclosed by operation of law or any binding judgments or order, or any requirement of a competent authority;
 - (ii) is reasonably required to be disclosed in confidence to a party's professional advisors for use in connection with matters contemplated herein; or
 - (iii) is or becomes within the public domain otherwise than through default of the recipient party.
- 11.2 No public announcement or press release in connection with the subject matter of these Terms and Conditions (including for the avoidance of doubt the Engagement by the client of any Person) shall be made or issued by or on behalf of a party without the prior approval of the other except such as may be required by law or by any governmental authority.

The use of publicity/presentation material relating to or referring to the relationship between the Client and Balance Resourcing shall be agreed by both parties in writing prior to its use.

On termination of any contract incorporating these Terms and Conditions each of the parties undertakes to promptly return to the other all information of a confidential nature provided to it by the other



including all working papers, information relating to any Persons supplied by Balance Resourcing to the Client and information relating to any opportunity at the Client that may have been provided to Balance Resourcing or other confidential material exchanged between the parties. The obligations of each party under this clause 11 shall survive termination of any contract incorporating these Terms and Conditions and continue thereafter without limit in time.

11.3 Each of the parties shall treat the contract into which these Terms and Conditions are incorporated as being confidential.

11.4 The Client acknowledges and agrees that no representation or warranty has been or will be made by Balance Resourcing as to the accuracy, reliability or completeness of any of the Confidential Information supplied to the Client by it.

12 Termination

Either party may terminate the contract into which these Terms and Conditions are incorporated by notice to the other party.

13 Consequences of Termination

Upon any termination of the contract into which these Terms and Conditions are incorporated:

- a. The rights and obligations of the parties under this Agreement shall terminate;
- b. Clauses 1, 2, 3.2, 3.3, 5 to 11 inclusive and 13 to 16 inclusive shall remain in effect ;
- c. Any accrued rights or obligations to which any party may be entitled or be subject before its termination shall remain in full force and effect;
- d. The Client shall remain liable to pay Balance Resourcing's fees in respect of any engagement of any Person occurring after termination of the contract that falls within the scope of clause 5 or clause 7;
- e. No fees already paid to Balance Resourcing shall be refundable save as expressly provided otherwise in clause 7;
- f. Termination shall not affect or prejudice any right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination.

14 Miscellaneous

14.1 Neither of the parties hereto may assign his rights or obligations in whole or in part hereunder without the prior written consent of the other party hereto.



- 14.2 A person who is not party to the contract into which these Terms and Conditions are incorporated shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract into which these Terms and Conditions are incorporated. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.3 The contract into which these Terms and Conditions are incorporated constitutes the entire agreement between the parties hereto with respect to the matters dealt with therein and supersedes any previous agreement between the parties hereto in relation to such matters. Each of the parties hereto hereby acknowledges that in entering into this agreement it has not relied on any representation or warranty save as expressly set out herein or in any document introduced to herein. No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by such of the parties hereto which would be affected by such variation.
- 14.4 No failure to exercise and no delay in exercising on the part of any of the parties hereto any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 14.5 The restrictions contained in these Terms and Conditions, as qualified by any exceptions thereto, are considered reasonable by the parties and necessary to protect the business of Balance Resourcing but in the event that any such restriction shall be found to be void or voidable but would be valid and effective if some part or some parts thereof were deleted, such restriction shall apply with such modification as may be necessary to make it valid and effective.
- 14.6 The illegality or un-enforceability of any provision of these Terms and Conditions shall not affect the validity and enforceability of the remaining sections and legal or enforceable provisions hereof.
- 14.7 All notices under these Terms and Conditions shall be in English language and shall be in written form and given by registered mail, return receipt requested, and addressed to the parties at the addresses indicated herein, or to such other addresses of which either party may advise the other in writing. Notices will be considered delivered: if by post, 72 hours after posting, if by delivery when left at the relevant address or if by facsimile upon transmission subject to the correct code being received on the transmission report.
- 14.8 The Client shall comply with the requirements of the Data Protection Act 1998 in relation to any information Balance Resourcing provides to it relating to any Person. The Client shall indemnify Balance Resourcing against any claims brought against Balance Resourcing as a result of the Client's failure to comply with the Data Protection Act 1998.
- 14.9 Nothing in these Terms and Conditions shall constitute or be deemed to constitute a partnership or agency relationship between any of the parties hereto and neither of the Client or Balance Resourcing shall have any authority to bind the other of them in any way.

15 Process agent

If the client is from outside the European Union it shall be a condition of Balance Resourcing acting for that client that he appoints an agent as his process agent to receive on his behalf service of process of any



proceedings in England commenced by Balance Resourcing. Service on the process agent shall amount to good service on the Client irrespective of whether it is forwarded to and received by the Client or not. If the process agent ceases to have an address in England or otherwise ceases for any reason, to be able to act as the process agent, the Client irrevocably agrees to appoint a substitute process agent with an address in England acceptable to Balance Resourcing and to deliver to Balance Resourcing a copy of the substitute process agent's confirmation of agreement so to act within seven days. If the Client fails to appoint a substitute process agent, it shall continue to be effective service for Balance Resourcing to serve the process on the last known address in England of the last known process agent for the Client appointed in accordance with the terms of this Clause 15, even though such process agent is no longer found at such address or has ceased to act.

16 Governing Law and Jurisdiction

These Terms and Conditions shall be governed by and construed in accordance with English Law. Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of England always provided Balance Resourcing shall be entitled to commence proceedings in such other courts as it considers appropriate.



Schedule 1

Fee Schedule

TO BE AGREED WITH THE CLIENT. PLEASE SEE ATTACHED "FEE SCHEDULE".



Schedule 2

The client shall provide Balance Resourcing with the following information in order to enable Balance Resourcing to provide the services under this agreement:

- (a) the identity of the Client and the nature of the Client's business;
- (b) the date on which the Client requires a Person to commence work and the duration, or likely duration of the work;
- (c) the position which the Client seeks to fill, including the type of work a work- seeker in that position would be required to do, the location at which and the hours during which he would be required to work and any risks to health and safety known to the client and what steps the client has taken to control such risks;
- (d) the experience, training, qualifications and any authorisation which the Client considers are necessary or which are required by law, or by any professional body, for a Person to possess in order to work in the position;
- (e) any expense payable by or to the Person;
- (f) the minimum rate of remuneration and any other benefits which the Client would offer a Person in the position which it seeks to fill, and the intervals at which the Person would be paid; and
- (g) where applicable, the length of notice which a Person in such a position would be required to give, and entitled to receive, to terminate the employment with the Client;

and any other information that may be required by Regulation 18 of the Regulations and such other additional information as Balance Resourcing reasonably requests in order to facilitate the provision of the services.