

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF

1. DEFINITIONS

In these Terms of Business the following definitions apply: -

"Applicant"	means an individual introduced to the Client by CER for an Engagement;
"CER"	means Capita Education Resourcing, a division of Capita Resourcing Limited (registered number 3949686) whose registered office is situated at 71 Victoria Street, Westminster, London, SW1H 0XA;
"The Client"	means the person, institution, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to which the Applicant is introduced;
"Engagement"	means any employment, engagement or use of an Applicant by a Client, whether under a contract of service or for services, agency arrangement or any other engagement;
"Fee"	means 20% of the Gross Remuneration or £3,000, whichever is greater; "Gross Remuneration" means the gross equivalent annualised taxable salary payable to the Applicant;
"Introduction"	means the Client's interview of an Applicant in person or by telephone, following the Client's instruction to CER to search for an Applicant or the passing to the Client of a curriculum vitae or information which identifies the Applicant;

Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

The headings contained within these terms are for convenience only and do not affect their interpretation.

2. GENERAL

- 2.1 CER acts as an Employment Agency within the meaning of the Employment Agencies Act 1973.
- 2.2 These terms govern the supply of Applicants to the Client and are applicable to any and all Introductions. These Terms are deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of an Applicant.
- 2.3 No variation or alternation of these terms shall be valid unless approved in writing by both CER and the Client.
- 2.4 Unless otherwise agreed in writing, these terms shall prevail over any terms of business provided by the Client.
- 2.5 All payments due to CER pursuant to these terms shall be paid within 14 days of the date of any invoice. In respect of any amount to be paid by the Client to CER pursuant to these terms, CER reserves the right to charge interest on any unpaid amounts at the rate of 4% per annum above the base rate of Lloyds TSB Bank plc from the due date until the date of payment, and to claim legal costs, where such amount remains outstanding for more than 14 days from the date of the invoice.
- 2.6 Whilst CER agrees to make every reasonable effort to ensure reasonable standards of skills, integrity, reliability and suitability of Applicants introduced to the Client, it is the responsibility of the Client to satisfy itself on all such matters and on the suitability of any Applicant before Engagement.
- 2.7 The Client acknowledges and agrees that certain group companies of Capita Business Services Limited may from time to time contact the Client to offer services which may be of interest to the Client.
- 2.8 These terms shall be subject to and interpreted in accordance with the laws of England and CER and the Client shall submit to the exclusive jurisdiction of the Courts of England.
- 2.9 All invoices issued pursuant to these terms will be subject to value added tax on the full amount of the invoice.
- 2.10 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right of remedy of a third party which exists or is available apart from that Act.
- 2.11 In the event that the provision of the services by CER will require the use of or access to personal data (as that term is defined in the Data Protection Act 1998 (the "Act") or in any legislation amending or superseding the Act) supplied by CER, the Client will use such personal data only in accordance with the written instructions of CER:
 - (a) any written data, including, without limitation, any personal data so supplied by CER will remain the property of CER, and, upon expiry or termination (howsoever effected) of the agreement, the Client will forthwith procure the return of the same and any copies thereof to CER;
 - (b) without prejudice to the foregoing, the Client will comply with obligations equivalent to those imposed by the seventh principle of the Act. CER may take all reasonable steps to ensure such compliance by the Client.
- 2.12 Save for any information already in the public domain or any information which subsequently comes into the public domain other than by a breach of this clause, neither CER nor the Client shall use or disclose any information (including without limitation any trade secrets, business or commercially sensitive information) obtained from the other except as necessary for the performance of these terms.
- 2.13 CER acknowledges that if the Client is in the public sector it will be subject to the Freedom of Information Act 2000 ("the Act"). Where the Act applies each party to these terms shall transfer any request for information related to CER, to these terms or to any services provided by CER received under that Act to the other within two working days after receipt. Notwithstanding the right of the Client, in its sole discretion, to decide how to respond to such request, it shall take CER's views into account to the extent that such request relates to information about CER or these terms. The Client shall also notify CER as soon as practicable where any response to such request is referred to the Information Commissioner.

3. VAT

- 3.1 The Parties acknowledge that the fees/charges of CER have been calculated taking into account the recoverability of input VAT wholly or partly attributable to the provision of such Services.
- 3.2 Where, as a result of any change of law, any new or amended VAT ruling, any new or altered practice or interpretation of HMRC or any court or tribunal decision (which events shall be referred to individually or collectively as a Change of Law), CER suffers any restriction or reduction in the amount of input VAT wholly or partly attributable to the provision of the Services in respect of which it is entitled to credit or repayment:
 - (a) the amount of the fees/charges of CER payable by the Client shall, with effect from the date of such Change of Law, be increased so as to ensure that Capita is put in the same financial position as if no such Change of Law had occurred; and
 - (b) any amount payable by the Client to Capita pursuant to (a) shall be paid, in addition to and at the same time as any other consideration for the Services, and without any deduction, set off or withholding.
- 3.3 Where as a result of any Change of Law, the fees/charges of CER already supplied are deemed, as a result of such change, to have borne an amount in respect of VAT which was not VAT properly due thereon (Overpaid VAT), and the Client requests in writing that Capita seeks a refund from HMRC in respect of such Overpaid VAT then, subject to the Client indemnifying and holding harmless Capita for the costs and expenses incurred pursuant to any action taken under this clause 3.3 and subject to clause 3.4:
 - (a) CER shall take such action as may be necessary to claim a refund of the Overpaid VAT to the fullest amount permitted under UK legislation; and
 - (b) CER shall remit to the Client a sum equal to the amount actually received from HMRC in respect of such claim, less any costs and expenses incurred in or as a consequence of making such claim (to the extent not previously recovered pursuant to the indemnity above) and less an amount equal to any restriction or reduction (as a result of the Change in Law) in the amount of input VAT wholly or partly attributable to the provision of the Services already supplied in respect of which it is entitled to credit or repayment.
- 3.4 CER shall not be required to take any action referred to in clause 3.3(a) which involves engaging in any litigation or dispute with HMRC or any other tax authority or any third party, and shall not be obliged to take or omit to take any action which it, in its sole discretion, believes is or could be contrary to the interests of its business.
- 3.5 For the avoidance of doubt, save in accordance with clause 3.3, CER shall have no liability to pay any amount to the Client in respect of any Overpaid VAT.

4. NOTIFICATION AND FEES

The Client agrees:

- (a) to notify CER immediately in writing of any offer of an Engagement which it makes to the Applicant; and
- (b) to notify CER immediately in the event its offer of an Engagement is accepted; and
- (c) to pay the Fee within 14 days of date of invoice; and
- (d) to pay VAT, if applicable, on all charges.

5. REFUND

- 5.1 Should the Applicant, having taken up an Engagement with the Client terminate such Engagement the Client may be eligible for a refund provided always that written notification is received by CER within 7 days of the termination of the Engagement and that the invoice issued by CER has been paid in full within 14 days of the commencement of the Engagement, in which case the Client will be entitled to the following refund:
 - (a) within 2 weeks from the commencement of the Engagement – 80% of the Fee
 - (b) within 6 weeks from the commencement of the Engagement, or one school half term (whichever is the shorter) – 50% of the Fee
 - (c) within 12 weeks from the commencement of the Engagement, or one school term (whichever is the shorter) – 25% of the Fee
- 5.2 If the Client subsequently engages or re-engages the Applicant within the period of 6 calendar months from the date of termination of the Engagement or withdraws of the offer, the Fee becomes payable and there should be no entitlement to refund.

6. CANCELLATION FEE

- 6.1 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay CER a minimum fee of £3,000.

7. INTRODUCTION

- 7.1 Introductions are confidential. If the Client or any representative or employee of the Client refers the Applicant to any other person, or corporation within 4 months of the initial Introduction, and that person, firm or corporation engages that Applicant on a permanent, temporary or freelance basis, then Fee shall become payable by the Client as though the Client themselves had engaged the Applicant.
- 7.2 Where the amount of the Gross Remuneration is not known the Fee will be calculated by CER on the minimum level of remuneration applicable for the position in which the Applicant has been engaged with regard to any information supplied to CER by the Client and/or comparable positions in the market generally for such positions.

8. SUITABILITY AND REFERENCES

- 8.1 CER endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body, and that the Applicant is willing to work in the position which the Client seeks to fill.
- 8.2 At the same time as proposing an Applicant to the Client, CER shall inform the Client of such matters in clause 8.1 as they have obtained confirmation of. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following, save where the Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the Client.
- 8.3 CER endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 8.4 CER endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.
- 8.5 Notwithstanding clauses 8.1, 8.2, 8.3 and 8.4 above the Client shall satisfy itself as to the suitability of the Applicant to it or CER before engaging such Applicant. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.
- 8.6 To enable CER to comply with its obligations under clauses 8.1, 8.2, 8.3 and 8.4 above the Client undertakes to provide to CER details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the applicant would be entitled to give and receive to terminate the employment with the Client.

9. REFERENCES

- 9.1 CER will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If CER is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

10. LIABILITY

- 10.1 CER shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with CER seeking an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of CER to introduce any Applicant.