

## Terms and Conditions of Business for Permanent & Fixed Term Placements (Greater Africa only) issued August 2021

### 1 Scope of this Agreement

- 1.1 These Terms and Conditions shall apply to:
- any Business proposed or undertaken by RW for the Client in relation to hiring in the Territory; and
  - the employment, engagement, or other use by the Client of a Candidate 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 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, Placement and/or the employment, engagement, or other use by the Client of a Candidate 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 or Fixed Term Placement basis) 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 Unless otherwise notified to the contrary by the Client in writing to RW, the Client hereby provides RW with its consent to use and reproduce the Client's name, logo and trademarks within advertising for the Placement and for RW's general promotional literature (whether online or in print) provided always that RW shall not change or otherwise amend the Client's name, logo or trademark 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 for the Candidate.

### 3 Fees

- 3.1 The Placement Fees for non-Fixed Term 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. In the absence of such agreement, where a Placement is made, RW shall be entitled to charge Placement Fees calculated on its standard percentages current at the date on which the Placement Fee is invoiced by RW pursuant to these Terms and Conditions.
- 3.2 Overdue sums are subject to interest on the amount unpaid from the due date to the date of payment at a daily rate 2.5% per annum above the base rate of The Standard Bank of South Africa Limited (not to exceed

the maximum rate allowed by law under the circumstances).

3.3 The Placement Fees for Fixed Term Placements shall be calculated against the equivalent annual full time Salary Package pro-rated to the length of the Fixed Term Placement but otherwise calculated in accordance with the provisions of clause 3.1.

3.4 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's start date of employment with 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 before the Candidate commences, all three 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) The original fixed term (or any subsequent fixed term) is extended; or the candidate accepts permanent employment with the client within twelve (12) months of the original fixed term, a further fee will be calculated in accordance with the provisions of clause 3.3; or
- b) A new fixed term commences within twelve (12) months from the end of the previous fixed term, a fee will be calculated in accordance with the provisions of clause 3.3; or
- c) 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.

7.2 In each circumstance established pursuant to clauses 7.1(a), 7.1(b) and 7.1(c), the Client must notify RW immediately in writing of the occurrence 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 Placement occurs initially, an Introduced Candidate is employed or engaged by the Client within twelve (12) months from the Introduction;
- b) an offer of employment or engagement is made by the Client and accepted by the Candidate but (through no fault of the Candidate) no employment or engagement results; or
- c) irrespective of whether or not a Placement resulted from the Introduction of a Candidate by RW to the Client, the Candidate is Introduced by the Client to a third party within twelve (12) months of the date of Introduction whether such Placement is made through another recruitment agency, third party or by the Client direct.

8.2 The Client must notify RW immediately if a Candidate accepts employment with the Client or a third party to whom the Client has referred the Candidate including 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 Termination Date of a Candidate fall within a period of nine (9) weeks from the Candidate's start date with the Client, 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.
- g) 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.
- h) If the Salary Package of the replacement Candidate changes from that provided to the original Candidate, the invoiced amount will be adjusted accordingly.

9.2 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.

9.3 This clause 9 shall constitute an exclusive remedy for the Client in the regard to a Candidate's engagement terminating in the circumstances set out in clause 9.1.

## 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 Both Parties shall comply with its obligations in respect of the privacy of data as more particularly set out in the Protection of Personal Information Act (POPIA). 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, or the employees, directors, agents or contractors of each.

## 11 Law

11.1 These Terms and Conditions shall be governed by and construed in accordance with the law of the Republic of South Africa.

11.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration as set out in this clause.

11.3 The arbitration shall be conducted by one arbitrator who is a qualified attorney or advocate with ten years legal experience. If the Parties are unable to agree on the appointment of an arbitrator, the arbitrator shall be appointed by the chairperson of the Johannesburg Bar Council.

11.4 The arbitration shall be held in Johannesburg and the Parties shall endeavour that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

11.5 The arbitration shall be governed by the Arbitration Act 1965 (as may be updated) shall take place in accordance with the Commercial Arbitration Rules of AFSA.

11.6 Nothing contained in this clause shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

11.7 The Parties shall share the costs of the arbitrator equally.

## 12 Independent Contractors

12.1 The relationship between the Parties established by these Terms and Conditions is that of independent contractors, and nothing contained within them shall be construed to: (a) give either Party the power to direct or control the day-to-day activities of the other Party; (b) constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (c) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

12.2 These Terms and Conditions are not intended to create any employment relationship between RW and the Candidate. RW functions merely as a placement agency and not as a temporary employment service or labour broker. Where the Candidate is hired by the Client, the Client is the sole employer of the Candidate.

## 13 General

- 13.1 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.
- 13.2 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.
- 13.3 The Client will not during the course of RW's engagement 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. 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.
- 13.4 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.
- 13.5 If a Party is prevented in the performance of its obligations under this Terms and Conditions by circumstances that are beyond the control of that Party (acting reasonably) then that Party will not be liable for what would otherwise have been a breach of its obligations under these Terms and Conditions.
- 13.6 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.
- 13.7 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.
- 13.8 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.
- advertising campaign, additional pre-employment screening requirements or the like for a specific Placement.
- b) **"Business"** means work performed by RW in relation to permanent 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.
- c) **"Candidate"** means an individual Introduced by RW to the Client.
- d) **"Client"** means you or any of your ultimate holding company and all of its subsidiaries.
- e) **"CV"** means curriculum vitae.
- f) **"Fixed Term Placement"** means any Candidate Introduced to the Client who becomes employed or engaged directly by the Client on a fixed term contract.
- g) **"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" and "Introduce" shall be construed accordingly.
- h) **"Parties"** means collectively RW and the Client and each individually shall be referred to as a "Party".
- i) **"Permanent Placement"** means any Candidate introduced to the Client who is employed directly by the Client on an indefinite basis.
- j) **"Placement"** means a position or role to which a Candidate may be or is appointed on a permanent or Fixed Term basis (including a Fixed Term Placement) with the Client.
- k) **"Placement Fees"** means the fees payable in US\$ and due to RW in relation to a specific Placement calculated in accordance with these Terms and Conditions.
- l) **"Retained Search"** means an exclusive instruction for which non-contingent advance fees will be due to the work undertaken by RW.
- m) **"RW"** means Robert Walters PLC (External Profit Company) whose principal place of business is 19th Floor, GreenPark Corner, Cnr West Road South and Lower Road, Morningside, Sandton, Johannesburg, Gauteng, 2196, South Africa
- n) **"Salary Package"** means the annual anticipated gross remuneration package for a Candidate (on a "total cost to the company" basis), which includes gross annual salary, applicable benefits for which

## Definitions and Interpretation

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

- a) **"Additional Costs"** shall for example mean any

there is a cash equivalent paid to the Candidate, profit share, commission, bonus, living allowances, travel allowances, medical benefits, overseas allowances and joining inducements. For the purposes of calculating Placement Fees, the provision of a car to the Candidate is valued at US\$10,000 per annum (up to a maximum of 25% of the other elements of the Salary Package).

- o) “**Subsidiary**” shall have the meaning more particularly given in Companies Act 2008 and the term “Subsidiaries” shall be construed accordingly.
- p) “**Termination Date**” shall mean the last day of the Candidate’s contractual notice period with the Client (regardless of whether or not the Candidate serves their whole notice period).
- q) “**Territory**” means any of the following countries: Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroon, Congo (Republic of Congo), Côte D’Ivoire, DRC (Democratic Republic of Congo), Egypt, Eswatini, Ethiopia, Gabon, Ghana, Kenya, La Réunion, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe