

# TERMS AND CONDITIONS OF BUSINESS FOR PERSONNEL PLACEMENT - PERMANENT & FIXED TERM PLACEMENTS - ROBERT WALTERS SWITZERLAND

## 1. Scope of this Agreement

- 1.1 These Terms and Conditions shall apply to:
- any Business the Client engages RW with and/or is undertaken by RW for the Client; and
  - the employment, engagement or other use by the Client of a Candidate Introduced by RW.
- 1.2 In the absence of written confirmation or explicit engagement, 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, and engagement, employment 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 care in the sourcing and Introduction of Candidates to the Client.
- 2.2 The Client shall immediately 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 Should the Client already have received a Candidate's CV or details prior to RW's Introduction then the Client must inform RW in writing or by email within three (3) working days of the date of the Introduction together with supporting evidence of receipt. Otherwise, the Candidate shall be considered as having been introduced by RW.
- 2.4 RW do not and are not obliged to ask Candidates to supply personal or business references relating to their past employment or otherwise. Should a Candidate or a third party provides any such details of their own volition (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. The information about a candidate provided by RW is based on the information that the Candidate itself made available or on information provided by third parties. RW accepts no liability for the correctness and completeness of the information provided. 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.
- 2.5 Where the Client has instructed RW to approach a particular Candidate on the Client's behalf, the Client shall for this purpose indemnify and hold RW harmless 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 taken instruction.
- 2.6 RW gives no representation or warranty that any Candidate is or will be willing and/or available to accept any Placement. Nor does RW guarantee that the Candidate will meet the expectations set by the Client or achieve certain work results. A guarantee for the work performance of the placed Candidate is excluded.
- 2.7 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.
- 2.8 The Client acknowledges that the final decision to employ or engage the Candidate rests with it.
- 2.9 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.
- 2.10 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.
- 2.11 RW shall not be responsible for and does not guarantee the arrangement of work permits, insurance or other necessary approvals/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 as set out in the Fee Schedule.
- 3.2 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.
- 3.3 Placement Fees are exclusive of any Value Added Tax which shall be additionally charged by RW at the prevailing rate.

## 4. Additional Costs

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 The Client shall pay all RW invoices (including those for Additional Costs) in full, within seven (7) working 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 on the date of commencement of employment of a Candidate. The Client undertakes to notify RW in writing of the signing of an employment contract with the Introduced Candidate by RW immediately after signing the contract. 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 written dispute is raised towards RW in respect of the same, within three (3) days of the date of such invoice. 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 invoice issued by RW.
- 5.4 Any third party costs and/or expenses (including legal fees and other professional fees) that RW incurs 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 shall be calculated on the basis of the Salary Package and invoiced to the Client in three stages:
- thirty three percent (33%) of the Placement Fee on RW's agreement to undertake the Business (based on an estimate of the Salary Package);
  - 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
  - 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:
- the original fixed term (or any subsequent fixed term) is extended, further fees will be calculated in accordance with the provisions of clause 3.2; or
  - the Candidate accepts permanent employment with the Client, 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 and 7.1 b, 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 in writing as soon as possible and in any event within seven (7) calendar 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:
- although no Placement occurs initially, an Introduced Candidate is employed or engaged by the Client within twelve (12) months from the Introduction;
  - 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
  - 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 the Introduction, whether such Placement is made through another recruitment agency, 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 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:
- the Candidate leaves of their own volition and not due to any redundancy measures, change in job description or change in work conditions;
  - RW's invoices have been settled in accordance with these Terms and Conditions;
  - the Client has complied with its obligations to the Candidate including its obligations under any relevant law;
  - the request is given exclusively to RW to replace the Candidate;
  - the replacement role is the same as the initial Placement; and
  - 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 engagement terminating in the circumstances set out in clause 9.1.

## 10. Team Placements

- 10.1 The placement fee for two or more members of a Team Hire, previously working in the same Team, will be calculated at thirty percent (30%) of the combined total of Team Hire's total annual gross salary package (the "Team Fee").
- 10.2 If within twelve (12) months following the commencement of the employment within the Client's premises, of the last member of the Team Hire, the Client hires further members of the same Team, with or without the involvement of RW, the Client shall pay to RW a further Team Fee equal to thirty percent (30%) of each additional Team Hire's total first-year salary package.
- 10.3 Each Team Fee is capped at CHF 1,000,000 (one million) in total, regardless of the number of members of Team Hire.
- 10.4 The Client acknowledges that RW is under no obligation to recruit or solicit any additional Team members. Furthermore, RW is under no obligation to check whether any members of a Team are subject to any undertakings towards their employer. The Client is solely responsible for any liabilities resulting from engaging a full or partial Team.
- 10.5 The Parties agree that Clause 9 shall not apply to the members of Team Hire not directly introduced by RW.

## 11. Confidentiality and Data Protection

- 11.1 Each Party will hold information of the other that can be reasonably regarded as being confidential or is explicitly 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. The application documents, i.e. in particular CVs or details of the Candidate provided to the Client by RW are the property of RW and shall not be given to third parties.
- 11.2 Data on job seekers and vacancies may only be collected, processed and used to the extent necessary for the placement. The Client undertakes not to use the data and information provided to him for purposes other than those for which they were provided or to pass them on to third parties and to delete the data after a Candidate has been rejected or the placement has been completed. Furthermore, the Parties process the personal data in compliance with the applicable Data Protection Legislation. 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.

## 12. Law and Jurisdiction

- 12.1 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 at the place of business of RW.
- 12.2 These Terms and Conditions shall be governed by the laws of Switzerland.

## 13. General

- 13.1 Unless otherwise agreed, 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. The parties shall replace the ineffective provisions by effective agreements which come closest to the economic purpose of the ineffective provisions.
- 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.

## Definitions and Interpretation

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

**"Additional Costs"** shall for example mean any advertising campaign, additional pre employment screening requirements or the like for a specific Placement or any other agreed supplementary charges.

**"Business"** means RW's activities in the field of personnel recruitment, in particular the providing of CVs (solicited or unsolicited) by RW to the Client, the creation of 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 and/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.

**"Fee Schedule"** means the document found at page 3 of these Terms and Conditions or any other document or written (including electronic) confirmation of the fees as agreed between the Parties.

**"Fixed Term Placement"** means a direct contract or engagement between any Candidate Introduced to the Client by RW and the Client, which is concluded for a fixed term and ends without notice.

**"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.

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

**"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.

**"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 Switzerland AG, a company incorporated under the laws of Switzerland with registered number CH-020.3.033.164-5, whose registered office is currently at Claridenstrasse 41-43, 8002 Zürich, Switzerland. RW's Geneva branch Robert Walters Switzerland SA is located at Rue de la Cité 1, 1204 Geneva, Switzerland.

**"Salary Package"** means the annual anticipated gross remuneration package during a Placement or Engagement, which includes gross annual salary, applicable benefits for which there is a cash equivalent paid to the Candidate, any applicable 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 CHF 10,000 per annum, if applicable.

**"Subsidiary"** a company is a "subsidiary" of another company, its "holding company", if that other company i) holds a majority of the voting rights in it, or ii) is a member of it and has the right to appoint or remove a majority of its board of directors, or iii) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or if it is a subsidiary of a company that is itself a subsidiary of that other company.

**"Team"** means a group of persons managed by the same line manager.

**"Team Hire"** means a group of persons previously working in the same Team and of which at least two join the Client, at once or in the 12 months following the first candidate's start date, in a similar capacity or structure.

**"Team Fee"** means the payable fee, calculated on the basis of the combined total of the Team Hire's total annual gross salary package.

## FEE SCHEDULE PLACEMENT FEES

The table below sets out RW's standard % fees for permanent recruitment which are subject to and incorporated into the Terms and Conditions of Business for Permanent and Fixed Term Placements of Robert Walters Switzerland AG above (the "Terms").

<b>SALARY PACKAGE</b>	<b>FEE AS % OF SALARY PACKAGE</b>
0 to CHF 99,999	25%
CHF 100,000 +	30%

The minimum fee charged for an engagement of or placement by RW is CHF 20,000 (net).

For retained searches, fees will be payable in three (3) equal instalments in accordance with clause 6 of the Terms.

RW may propose an increased % in certain circumstances, for example where the role is likely to require additional time and resource to be applied by RW or the nature of the services is more complex.

Any such increase or any other variation to the fees is subject to written agreement (which may include by email) between RW and the Client.