

# Executive Search and Selection - TERMS AND CONDITIONS OF BUSINESS

These Terms and Conditions will apply to all Executive Search and Selection services (the “Services”) provided to any person (the “Client”) by GatenbySanderson Ltd (“GSL”) and are deemed to be accepted by the Client when GSL commences work on an assignment. These Terms and Conditions form the contract under which GSL provides the Services (the “Contract”) and any variation to these Terms and Conditions must be agreed to in writing by GSL.

outside the Client's employment, without GSL's written consent.

## Data protection

- 3.1 The definitions and interpretations in the Data Protection Act 1998 (and any subsequent amendment or re-enactment) (“the Act”) shall apply to this clause. Where necessary to enable us to deliver the Services, for such purposes we shall have your authority to process personal data on your behalf in accordance with this clause. When we do so, we shall take appropriate technical and organisational measures designed to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. In particular, we shall act only on your instructions and we shall comply at all times with the Act. We shall answer reasonable enquiries to enable you to monitor our compliance with this clause.

## Fees and Expenses

- 4.1 GSL's fee levels are dependant upon the nature of the assignment and will vary depending on whether the assignment is:
- 4.1.1 Executive search (head-hunting) and selection assessment of candidates
  - 4.1.2 Combined assignments which include advertising and an element of executive search and selection
  - 4.1.3 Executive selection where only advertising is used to generate candidates
  - 4.1.4 Combined assignments which include advertising and executive search but no selection service
  - 4.1.5 (a) Expenses, excluding advertising, covering GSL travel, subsistence, telephone and courier costs for executive search or selection assignments will be agreed with you. Expenses will be billed together with fee invoices.  
(b) Where GSL handles candidate expenses on your behalf these will normally be billed together with fee invoices. In the event that we receive candidate expenses after billing you the final fee invoice we will bill these late expenses to you separately within one month of sending you the final fee invoice.  
(c) GSL's charges for website construction, pack production, technical assessment and candidate profiling will be billed together with the fee invoices.  
(d) Where GSL creates and or places advertising on your behalf, these charges will be billed to you upon placement of the advertising.
- 4.1.6 Fees are payable in three instalments as follows:
- (a) A retainer of 50 per cent of estimated fee on receiving the Client's authority, whether oral or written, to proceed with an assignment;
  - (b) A retainer of 30 per cent of estimated fee on presentation to the Client of a shortlist;
  - (c) A final reconciliation fee calculated against actual remuneration will be submitted on acceptance of the selected candidate.
- 4.2 Fees and expenses are stated exclusive of VAT which will be charged to the client at the prevailing rate.
- 4.3 Fees are non-returnable.

## 1 General Conduct

- 1.1 Legislation – GSL will comply with the provisions of all relevant legislation which governs GSL's conduct when providing the Services including the relevant provisions of the Sex Discrimination Acts 1975 and 1986, the Equal Pay Act 1970, the Race Relations Act 1976 and the Disability Discrimination Act 1996 or any amended or superseding legislation.
- 1.2 Staff - Neither GSL nor the Client will during the period of the Contract or within 6 months of its termination or expiry solicit directly or indirectly any staff of the other who have been involved in providing or receiving Services or otherwise connected with the Contract without the prior written consent of the other.. This will not restrict either party from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.
- 1.3 References - Unless specifically agreed, it is the Client's responsibility following the selection of a candidate for an appointment for taking up references. However, the Client agrees that it will not seek references prior to any offer being accepted by a candidate without their written consent.
- 1.4 Candidates - GSL will use all reasonable skill and care when providing Services. GSL relies on the good faith of candidates and accepts no responsibility for any false or inaccurate information provided or representation made by a candidate. GSL does not give any representation or warranty that a potential employee is or will be available or is suitable for the Client's requirements. GSL will not be held responsible for a candidate terminating employment prematurely. The Client acknowledges that candidates are not employees of GSL and GSL will not be liable for any actions of candidates.

## 2 Confidentiality of Information

- 2.1 In accordance with the Employment Agencies Act 1973, confidentiality of information provided by both Client and candidates to GSL will be maintained. Accordingly the Client is reminded that:
- 2.1.1 Information provided by the Client will be treated by GSL as confidential and will not be disclosed to candidates or anyone outside GSL without the Client's permission. Where it is agreed that information may be disclosed to candidates, they will be reminded of the confidentiality of any such information passed to them.
- 2.1.2 Information provided by a candidate will be treated by GSL as confidential. Disclosure of information on candidates to the Client will only be made with the consent of a candidate. The only exception to this will be when the advertisement to which the candidate has responded, specifically states that candidate details will be forwarded to the Client.
- 2.1.3 It is a condition of engagement of GSL that the Client will respect the confidential information submitted in respect of candidates and no details of candidates submitted will be passed to, or discussed with, persons

4.4 The fee basis will be adjusted in the following circumstances:-

4.4.1 where more than one candidate is appointed from the assignment the additional fee for the second and each subsequent appointment, will be 15 per cent of their first year's remuneration;

4.4.2 The client has the right to terminate any Services being undertaken on receipt by GSL of notice in writing. Where an assignment is terminated by the Client the next fee instalment which would have been due but for such termination, together with pro-rated expense will, notwithstanding termination, be payable within thirty days of receipt of the appropriate invoice such termination. The appointment of a person not introduced by GSL will constitute termination for the purpose of this clause.

4.5 If the Client alters materially its requirements as agreed at the commencement of work, then, in addition to the fees payable in accordance within these Terms and Conditions, an additional fee may become payable, plus all the agreed advertising and other expenses incurred by GSL.

4.6 Where any candidate is initially rejected by the Client, or the candidate initially rejects the Client's offer of engagement, and is subsequently engaged by the Client in any capacity whatsoever, at any time during the 12 months after the initial introduction date, then the Client shall be responsible for the payment of a fee equal to the full introduction fee which would ordinarily have become payable by the Client under Clause 4.2.

4.7 Where an appointed candidate voluntarily leaves or is dismissed from a Client's employment within three months of commencing employment, GSL may offer to present other suitable candidates on an expenses only basis.

4.8 Fees and expenses in clause 4.2 above are payable within 30 days of the date of an invoice, with the exception of invoices for advertising under clause 4.3 which are payable within 21 days of the invoice date.

4.9 GSL has a right to charge interest (both before and after any judgment) calculated daily at a rate of 3% per annum above the base rate of National Westminster Bank plc on all amounts remaining unpaid after the due date.

## 5 Complaints Procedure

GSL will look into any complaint carefully and promptly and will discuss the position with the Client. If any problems do arise, to the Client should contact Graham Goodwin, the Managing Director of GSL.

## 6 Liability

6.1 GSL will accept liability without limit for death or personal injury caused by GSL's negligence.

6.2 GSL will accept liability to pay damages in respect of loss or damage suffered by the Client as a direct result of providing the Services to the Client where this arises as a consequence of a breach of contract or negligence by GSL. This liability will be limited to the lower of £500,000 or the fees paid or payable by the Client to GSL under the Contract.

6.3 The remedies available and the liability GSL accepts under this Clause 5 are the only remedies and, to the extent permissible by law, are the absolute limit of GSL's liability arising under or in connection with the Contract. All other liability is expressly excluded in particular but, without limitation, liability for loss of

profits, special or consequential loss including, without limitation, economic loss or failure to realise anticipated savings or benefits.

6.4 To the extent permissible by law, all warranties, conditions or terms other than those expressly set out in this Contract are excluded including but not limited to all implied and statutory conditions.

6.5 Any legal proceedings arising from this Contract must be brought either within 2 years from the date when the party bringing the proceedings first becomes aware or ought reasonably to have become aware of the facts which give rise to the liability or alleged liability, or within any relevant statutory limitation period, whichever is the earlier.

6.6 In this Clause the term "Contractor(s) means GSLs' employees or any agent or sub-contractor of GSL and their respective employees, agents, partners or sub-contractors who perform work in connection with the Services. The Client acknowledges that in relation to the Services and this Contract its relationship is solely with GSL, and that no Contractor will have any liability to the Client in connection with the Services or this Contract except for any liability arising from death or personal injury caused by the negligence of a Contractor. The Client therefore agrees not to bring any claim of any nature against any Contractor relating to the Services or this Contract except for claims relating to death and personal injury caused by its negligence. The Client acknowledges and agrees that GSL will have the right (subject to the discretion of the Court) to a stay of proceedings if the Client brings any claim against a Contractor in breach of this Clause.

6.7 GSL shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of GSL's obligations in relation to the Services, if any delay or failure was due to any cause beyond GSL's reasonable control.

6.8 The Client shall indemnify and shall keep indemnified GSL against all losses, damages, costs, actions, proceedings, claims, demands, liabilities and expenses which GSL may suffer or incur arising from the employment of any candidate by the Client.

## 7 General

7.1 Waiver - no failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

7.2 Severability - in the event that any provision of these Terms and Conditions shall be determined by a competent authority to be invalid, unlawful or unenforceable to any extent, such provision shall, if unable of modification under Clause 6.3, to that extent be severed from the remaining provisions which shall continue to be valid to the fullest extent permitted by law.

7.3 Validity of Contract Provisions - if a Court or other competent body decides that any provision of these Terms and Conditions is void or otherwise ineffective but would be valid and effective if appropriately modified then such provision will apply with the modification necessary to make it valid and effective.

7.4 Applicable Law - The Contract will be governed by and interpreted in accordance with the laws of England, and both of us submit to the exclusive jurisdiction of the English Courts in connection with the resolution of any dispute arising from the Contract.