

oyster

Permanent Terms of Business



2022 - 2023

oysterpartnership.com

1 INTERPRETATION

1.1 In these terms and conditions of business (“the Terms”) the following expressions will be given the following meanings:

'Applicant' 'Client'	a person Introduced by Oyster Partnership to the Client to be considered for Engagement; any person, firm, or corporate body (together with any subsidiary or associated company as defined in S1159 of the Companies Act) who approaches Oyster Partnership with a view to Engaging an Applicant, or to whom an Applicant is introduced by Oyster Partnership;
'Data Protection Laws'	the Data Protection Act 2018, including any applicable statutory or regulatory provisions, and all European Directives and regulations in force from time to time, relating to the personal data and/or arising from the UK’s exit from the EU on 31/12/2019;
'Engagement'	the employment, hire or other use, directly or indirectly, whether under a contract of service or contract for services or otherwise, on a permanent, temporary or other basis, of an Applicant whether for the position for which the Applicant is Introduced or any other position, whether or not Oyster Partnership was the effective cause, (and “Engage”, “Engages” and “Engaged” will be construed accordingly);
'Introduction'	any means by which an Applicant’s CV and/or availability for any Engagement (actual or potential, present, or future) is communicated to the Client by Oyster Partnership including, by post, e-mail, phone or in person (and “Introduces” and “Introduced” will be construed accordingly);
'Introduction Fee'	the fee payable by the Client to Oyster Partnership for an Introduction resulting in an Engagement, whether or not Oyster Partnership is the effective cause of the Introduction, and regardless of whether the Applicant is Engaged by the Client for the role for which they were originally introduced by Oyster Partnership;
'Oyster Partnership'	Oyster Partnership Limited registered in England and Wales under number 05020374 whose registered office is at 64 North Row, Mayfair, London, W1K 7DA;
'Regulations'	the Conduct of Employment Agencies and Employment Business Regulations 2003 as amended (and ‘Regulation’ will be interpreted accordingly);
'Remuneration'	the gross base salary or equivalent fees for the first year’s Engagement (actual or proposed) including car allowance, only.

2 THE CONTRACT

2.1 In the Terms, words importing the singular will include the plural and vice versa; and any reference to “a Person” includes a person, firm or company.

2.2 All and any business undertaken by Oyster Partnership is transacted subject to the Terms which will be incorporated in any agreement between Oyster Partnership and the Client. In the event of any conflict between the Terms and any other terms and conditions, the Terms will prevail unless expressly otherwise agreed in writing by a Director of Oyster Partnership. No variation in the Terms will be valid if made without the written consent of a Director of Oyster Partnership.

2.3 If the Terms are not signed by the Client, the Client will be deemed to have accepted and agreed to the Terms if at any time on or after an Introduction the Client, or any Person on its behalf, directly or indirectly contacts an Applicant; or, an Applicant is interviewed by or on behalf of the Client; or, an offer of Engagement is made to an Applicant by or on behalf of the Client; or, an Applicant is directly or indirectly Engaged by or on behalf of the Client; or, the Client or any Person on its behalf acts upon the Introduction in any way (whichever first occurs).

2.4 An Introduction Fee will be charged whether or not the Client knew of the Applicant previously. If, upon Introduction, the Client considers that the Applicant is already known to it, it must notify Oyster Partnership within 7 days of Introduction. If the Client fails to do so, it will not be able to rely on previous knowledge of the Applicant after the event.

2.5 The complete or partial invalidity or unenforceability of any provision in the Terms for any purpose will in no way affect the validity or enforceability of such a provision for any other purpose or the remaining provisions. Any such provisions will be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.

2.6 For the purposes of the Regulations, when introducing the Applicant to the Client, Oyster Partnership is acting as an employment agency.

3 OBLIGATIONS OF OYSTER PARTNERSHIP

3.1 Oyster Partnership will use its reasonable endeavours to introduce a suitable Applicant to the Client to carry out the role for which Oyster Partnership has been advised there is a vacancy; or any role for which the Applicant is Introduced.

3.2 Notwithstanding Oyster Partnership’s obligations under the Regulations, no warranty as to the suitability of any Applicant, or of the validity of any qualification or experience which the Applicant may have or purport to have, can be given by Oyster Partnership.

3.3 If Oyster Partnership, on behalf of the Client, reimburses an Applicant their travelling and out of pocket expenses in connection with attending an interview with the Client, such costs will be invoiced to, and payable by, the Client in accordance with the payment terms set out in clause 5.9 below.

4 OBLIGATIONS OF THE CLIENT

4.1 The Client warrants to Oyster Partnership that if another employment agency (as defined by the Regulations) provides the Client with a CV or other relevant information relating to an Applicant Introduced by Oyster Partnership, the Client will reject the same unless such other employment agency can show that it has complied with the Regulations or provides the Client with a declaration from the Applicant that it is the sole agency appointed to act on the Applicant’s behalf.

4.2 To enable Oyster Partnership to comply with its obligations to the Applicant under the Regulations, the Client warrants to provide full details of the role which it seeks to fill including: the type of work; the location and hours of work; the experience training and qualifications which the Client considers necessary or which are required by law or any professional body for the role; and, any risks to health or safety known to the Client, and what steps it has taken to prevent or control such risks. In addition, the Client will provide details of: the date it requires the Applicant to commence work; the duration or likely duration of the work; the minimum rate of remuneration; expenses and any other benefits that are 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.

4.3 The Client:

4.3.1 will confirm that it is not aware of anything which will cause a detriment to the interests of the Applicant or the Client if it Engages that Applicant to fill a vacancy; and
4.3.2 will inform Oyster Partnership immediately if it becomes aware of any circumstances which would render such Engagement detrimental to the interests of the Applicant or the Client.

4.4 The Client will satisfy itself as to the suitability of any Applicant. The Client will take up references, check the validity of qualifications and ensure that the Applicant has the necessary experience and expertise required to undertake the role. The Client will obtain any work or other permits, and ensure the Applicant satisfies any requirements that may be appropriate or required by law.

4.5 When the Client Engages an Applicant Introduced by Oyster Partnership, the Client will be liable to pay an Introduction fee in accordance with clause 5.1 below, unless the Engagement occurs more than 12 months after the Introduction of the Applicant.

4.6 The Client will notify Oyster Partnership immediately an offer of Engagement is made to or accepted by an Applicant and provide details of the Applicant's Remuneration.

4.7 If the Client Introduces (directly or indirectly) any Applicant to another Person, resulting in the Engagement of the Applicant by that Person (which the Client will immediately notify to Oyster Partnership), the Client will pay Oyster Partnership an Introduction Fee calculated in accordance with clause 5.1 below, unless the Engagement occurs more than 12 months after the Introduction of the Applicant to the Client by Oyster Partnership. The Client agrees that this fee protects the legitimate interests of Oyster Partnership in this situation, and no refund will be available.

4.8 The Client will not Engage or seek to Engage any member of Oyster Partnership's staff. If any member of Oyster Partnership's staff accepts an Engagement with the Client within three months of leaving Oyster Partnership, the Client will pay an Introduction Fee to Oyster Partnership as if that member of staff had been Introduced to the Client by Oyster Partnership, calculated in accordance with clause 5.1 below with reference to the member of staff's Remuneration as at the date of leaving Oyster Partnership. The Client agrees that

5 INTRODUCTION FEES

5.1 Oyster Partnership will charge the Client an Introduction Fee calculated at a flat fee of £5,000 plus VAT or 25% of the Applicant's Remuneration plus VAT, whichever is the greater, for the Engagement of an Applicant Introduced to the Client. Oyster Partnership will raise its' invoice for the Introduction Fee once the successful candidate has signed the employment contract and served notice to their current employer or on the date on which Oyster Partnership becomes aware that the Applicant has commenced the Engagement if later.

5.2 The Introduction Fee charged for the Introduction of an Applicant for an Engagement is applicable for one Engagement only. For each additional Applicant Introduced by Oyster Partnership and Engaged by the Client, a further Introduction Fee will be payable.

5.3 If the Client withdraws the offer of Engagement after it has been accepted by an Applicant, the Client will be liable for a cancellation fee of 50% of the Introduction Fee. The Client agrees that this fee protects the legitimate interests of Oyster Partnership in this situation, and no refund will be available.

5.4 If the Client Engages an Applicant on a temporary, trial, probationary, fixed term, locum, or other such basis for any period of less than less than 6 months, the fee payable by the Client will be 50% of the Introduction Fee. If the Engagement is extended beyond 6 months, the Client will pay Oyster Partnership the remaining 50% of the Introduction Fee.

5.5 If an Applicant is rejected by the Client, or the Applicant rejects an offer of Engagement, and the Applicant is subsequently Engaged by the Client within 12 months of the date on which the Applicant was Introduced, the Client will pay an Introduction Fee to Oyster Partnership calculated at 25% of the Applicant's Remuneration. The Client agrees that this fee protects the legitimate interests of Oyster Partnership in this situation, and no refund will be available.

5.6 All invoices raised by Oyster Partnership will be paid by the Client within 7 days of the invoice date. Oyster Partnership reserves the right to charge the Client interest on any amount outstanding after the date for payment (both before and after judgment) from the due date of the invoice up to and including the day of payment at the rate of 8% per annum above the base rate of the Bank of England.

5.7 If the Client fails to provide Oyster Partnership with full details of the Applicant's Remuneration on or before the date on which an invoice for the Introduction Fee is due to be raised, Oyster Partnership may at its absolute discretion give notice to the Client of its assessment of the value of the Applicant's Remuneration and unless the Client provides Oyster Partnership with full details of the actual Remuneration within 1 week, Oyster Partnership's assessment of the Remuneration will be binding upon the Client for the purposes of determining the Introduction Fee payable by the Client pursuant to clause 5.1.

5.8 If one or more additional people who are working or have worked with an Applicant in any capacity (each a 'Member of the Applicant's Team') are Engaged by the Client as a result, directly or indirectly, of the Introduction of that Applicant to the Client by Oyster Partnership the Client will pay to Oyster Partnership an additional Introduction Fee in respect of each and every Member of the Applicant's team, calculated as a percentage of their respective Remuneration in accordance with clause 5.1; and the definitions 'Engaged' and 'Remuneration' in clause 1.1 and the provisions of clauses 3, 4, 5 and 6 will apply in respect of each Member of the Applicant's Team as if any reference to the Applicant is, and includes a reference to, such Member of the Applicant's team.

5.9 Any discount on Oyster Partnership's Introduction Fee, agreement to accept payment of fees by instalments, or any other concession, will not be valid and binding upon Oyster Partnership unless agreed in writing by a Director of Oyster Partnership.

6 REFUNDS

6.1 If an Applicant or the Client terminates an Engagement within the refund period outlined in clause 6.2 below, and provided that:

6.1.1 all moneys due under the Agreement have been paid by the Client in accordance with clause 5.6; and,

6.1.2 termination is not as a result of redundancy, injury, ill-health, discrimination against the Applicant under the Equality Act 2010, or any other circumstances beyond the Applicant's control; and,

6.1.3 termination has not arisen where the Client has entered into the Engagement with the prior or likely intention of disposing with the Applicant's services or terminating the Engagement either without proper cause or with a view to obtaining a refund unfairly; and,

6.1.4 the Client serves notice on Oyster Partnership in writing of the termination of the Engagement within 7 days;

6.1.5 Oyster Partnership has not supplied a free replacement within 8 weeks of the Applicant's termination; and,

6.1.6 the Client has complied with clause 4.6 above:

the Client will be entitled to a refund of the Introduction Fee in accordance with the scale set out in clause 6.2 below.

6.2 If the Client qualifies for a refund and has complied with clause 6.1 above, Oyster Partnership will raise a credit note for a refund of the Introduction Fee in accordance with the following scale:

Week of Engagement in which the Applicant leaves	Refund
1-4	75%
5-8	50%

6.3 No refund will be payable in respect of an Engagement where the Applicant was previously Engaged in any capacity by the Client through Oyster Partnership.

6.4 No refund will be payable if the Client has previously negotiated a discount of the Introduction Fee with Oyster Partnership which has been confirmed in writing.

6.5 No refund will be payable if the Engagement, in the opinion of Oyster Partnership, differs substantially from that which was offered to and accepted by the Applicant including (without limitation) changes in type of work, responsibilities and location.

6.6 If the Client, or any Person connected to or associated with the Client, re-Engages the Applicant within 12 months of the date of the termination of the Engagement referred to in clause 6.1 above, any Refund paid to the Client will be repayable in full to Oyster Partnership immediately upon demand; and no refund will be available in relation to the re-Engagement.

7 TERMINATION

7.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, immediately at any time, on written notice to the other Party:

7.1.1 if the other Party is in material breach of its obligations under this Agreement and, if the breach is capable of remedy, the breach is not remedied within 14 days of the other Party receiving notice which specifies the breach and requiring the breach to be remedied; or,

7.1.2 if the other Party becomes insolvent or an order is made or a resolution is passed for the winding up of the other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction); or, if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other Party's assets or business; or, if the other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

7.2 If either Party terminates this Agreement in accordance with clause 7.1 above, any existing Introductions will not be terminated but will continue and remain subject to the terms of this Agreement.

8 DATA PROTECTION AND CONFIDENTIALITY

8.1 For the purposes of this clause 8, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" will have the meanings prescribed under the Data Protection Laws.

8.2 The Parties acknowledge and agree that:

8.2.1 They shall constitute Data Controllers in their own right in respect of the Personal Data of Applicants that may be exchanged between them. Personal Data may include contact details, CVs, references, and other information provided directly by the Data Subject or otherwise collated about them for the purposes of assessing their suitability for Engagement.

8.2.2 Each Party shall be responsible for complying with the Data Protection Laws relevant to its own Processing of the Personal Data concerned.

8.3 The Client undertakes to keep confidential and not divulge to any third party any information it may learn relating to Oyster Partnership's business, except when that information is already in the public domain.

9 LIABILITY & INDEMNITY

9.1 Oyster Partnership will not be liable to the Client for any special, indirect, consequential, or additional loss suffered by the Client as a result of an Engagement and, in particular, but without limitation to the foregoing, any such loss, injury, damage, expense, or delay arising from or in any way connected with:

9.1.1 failure of the Applicant to meet the requirements of the Client;

9.1.2 any act or omission of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless, or otherwise.

9.2 Oyster Partnership's liability to the Client for any direct loss under the Terms shall be limited to the value of the Introduction Fee payable by the Client.

9.3 Oyster Partnership's liability to the Client will exclude any implied statutory warranties.

9.4 Oyster Partnership does not attempt to exclude or restrict liability to the Client for personal injury or death resulting from negligence.

9.5 The Client will indemnify Oyster Partnership for any direct, special, indirect, consequential, or additional loss suffered by any Person arising from or in any way connected with the acts or omissions of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless; or otherwise arising directly or indirectly out of, or in any way connected with, an Engagement;

9.6 The Client will indemnify Oyster Partnership in respect of any liability for actions, proceedings, claims, demands, costs, expenses, fines, penalties, losses, or damages in respect of any failure by the Client to observe perform and comply with the provisions of the Equality Act 2010.

9.7 The Client will indemnify Oyster Partnership in respect of any direct, special, indirect, consequential, or additional losses that it may suffer as a result of any breach of the Terms by the Client.

9.8 The Client will agree that the limitations and exclusions of the obligations and liabilities of Oyster Partnership set out in the Terms are reasonable, are reflected in the Introduction Fee, and that it will accept the risk and/or insure accordingly.

9.9 The Client will agree that when entering into the Terms, it does not do so in reliance on any representation, warranty, or other provision except as expressly provided in the Terms.

9.10 Nothing in the Terms will exclude the liability of either Party for fraud.

10 MISCELLANEOUS

10.1 Oyster Partnership reserves the right to review and to revise the Terms upon giving 14 days prior notice to the Client.

10.2 A notice required or permitted to be given by either Party to the other under the Terms will be in writing addressed to that other party at its registered office or principal place of business.

10.3 No waiver by Oyster Partnership of any breach of the Terms by the Client will be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 Except as expressly provided in the Terms a person who is not a party to the Terms will have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Terms. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

10.5 The Terms will be governed by and construed in accordance with the laws of England and Wales.

Signed by Sasza Bandiera on behalf of Oyster Partnership

[Handwritten signature in green ink]

Date:

[Handwritten signature in black ink]

.....
Managing Director

Signed by:

On behalf of:

.....

Date:

oyster

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