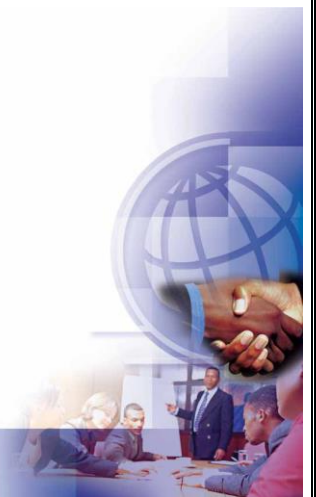


m-Ploy
Global Resourcing SA

**TERMS AND CONDITIONS
OF BUSINESS:**

**PERMANENT AND
CONTRACT RECRUITMENT**

YOUR CORPORATE SOLUTIONS PARTNER



**TERMS AND CONDITIONS OF BUSINESS:
PERMANENT AND CONTRACT RECRUITMENT**

The engagement of a Candidate introduced by the Agency will be deemed to be an acceptance of the terms and conditions contained in this document. It is further deemed to be accepted by the Client by virtue of a request for an introduction, an interview (whether effected by the Agency or directly by the Client), whether in person or by telephone, or email or by the signing of the Terms and Conditions. No variation to the fee structure or terms will be entertained unless reduced to in writing and duly authorised by the relevant Agency representative.

1. DEFINITIONS

- 1.1 **"Billings"** means Agency fees billed for services rendered.
- 1.2 **"Candidate"** means the person who is introduced to the Client by Agency, and who is or may be seeking work and/or is being placed with or considered for placement with the Client. The introduction may take the form of the Agency furnishing the Candidate's CV, via email, telefax, hand delivery, mail or any other form, on the Client; the arranging by Agency of an interview (telephonic or otherwise) between the Client and the Candidate; and/or Agency's referral of the Candidate and his/her details or information to the Client; and regardless whether such introduction is solicited or unsolicited.
- 1.3 **"Checks"** means background screening, which may or may not include verification of a Candidate's credentials, education, creditworthiness and/or criminal background checks.
- 1.4 **"Client"** means the prospective employer and the individual or entity that extends the offer of employment to, or the assignment to or engages the Candidate. It shall also mean the individual or entity that places a request or order to the Agency for the services of an independent contractor, or a contractor, or temporary worker, as defined by legislation and precedent
- 1.5 **"Contractor"** means the person placed with the Client for a specific time.
- 1.6 **"Employment"** means work of whatever nature or description undertaken and conducted by the Candidate on behalf of the Client. In the event that the Client engages the services of an entity in which the Candidate is represented, then the Candidate will be considered employed, assigned or engaged by the Client, and the financial benefit that accrues to that entity from the Client over the course of one year from the date upon which the services are provided shall be deemed to be the annual remuneration package of the Candidate. A Candidate will be deemed to be employed on the date upon which he or she tenders services to the client. A Candidate will be considered permanently employed irrespective of whether such person is employed on a Temporary, limited duration, or probationary basis, unless otherwise agreed between the Client

and the Agency, in writing. "Engagement" and "Assignment" have similar meanings, outside of the context of the employment relationship;

- 1.7 **"Employment Offer"** means a written or oral agreement with the Candidate to start employment at an agreed remuneration.
- 1.8 **"Fee/s"** means the placement fee due by the Client to the Agency for the services rendered.
- 1.9 **"Introduction"** shall be deemed to have been made when the Client (or any of its divisions, departments, or representatives) receives the CV of the Candidate (be it by hand, facsimile, e-mail or otherwise), and an interview is arranged between the Candidate and the Client (or any of its divisions, departments or representatives). A Client shall be deemed to have accepted and shall be bound by these terms and conditions of employment upon the introduction having been effected, as defined herein;
- 1.10 **"Placement"** shall be deemed to have been made when an offer of employment, assignment or engagement is offered by the Client to the Candidate and is accepted by him. The fee shall be due upon the placement having been effected, as defined herein, but shall not be payable by the Client until the commencement of employment.
- 1.11 **"Placement Fees"** means fees billed for services rendered or for purposes of recovery of costs incurred and may include/exclude penalty fees.
- 1.12 **"Services"** means the placement services rendered by the Agency to the Client, including the sourcing and general pre-assessment of Candidate/s, and introduction of and facilitation of a meeting between the Candidate and the Client.
- 1.13 **"Solicitation of Services"** means the direct or indirect request for the Agency's services by the Client

2. INTRODUCTION

- 2.1 All introductions and Candidate details are confidential and are supplied to the Client on the understanding that it will keep the information confidential and not disclose it to any third party without the Agency's prior written consent.
- 2.2 The Agency will not make an introduction or supply of Candidates to the Client until the Client has supplied the Agency with the following information:-
- (a) details confirming its personal and corporate identity and the nature of its business;
 - (b) the proposed start date for a Candidate and the likely duration of the work;
 - (c) the position the Client is seeking to fill, together with a summary of the type of work the Candidate would be required to do, the location and hours at which he would be expected to work, details of any potential health and safety risks and any steps the Client has taken

to limit such risks including copies of any and all relevant risk assessments undertaken by it in respect of the position it is seeking to fill;

- (d) details of the experience, training, qualifications and any authorisations required to be possessed by the Candidate (either as required by law or a professional body, or as the Client considers necessary); and
- (e) the minimum rate of remuneration and benefits to be offered and the intervals at which payment would be made.

3. PLACEMENT

- 3.1 The Client's acceptance of a Candidate for an interview will be deemed acceptance by the Client of the terms and conditions as stated herein, regardless of whether this Agreement has been signed. Should the Client employ a Candidate, whether on a part-time, full-time or contract basis (without limitation), and regardless whether the position the Candidate is appointed to is the position for which the Agency introduced the Candidate to the Client, the Client agrees and hereby undertakes to pay Agency the full fee as set out herein. This clause will similarly apply in the event of the Candidate being appointed by the Client within 1 (one) year of Agency's introduction of the Candidate to Client, whereupon the fees will be due and payable by the Client to Agency.
- 3.2 The Client undertakes to treat all information concerning the Candidate in the strictest of confidence and further agrees and undertakes under no circumstances to contact, directly or indirectly, the Candidate, the Candidate's current or previous employers, or the Candidate's references without the Agency's consent.
- 3.3 The Client undertakes to refrain from forwarding details of the Candidate to any associate company, subsidiary, holding company or sister company or third party. In the event that the Client breaches this clause, and the Candidate is, within 12 (twelve) months of being introduced to Client by the Agency, placed with such entity, the Client will be liable to pay Agency damages, which damages will equate to the fee the Agency would have earned had it placed the Candidate with such entity.
- 3.4 Agency will use its best endeavours to provide the Client with accurate details of the relevant Candidate/s, including with respect to their skills, qualifications and work experience. However, such details are primarily based on information provided by the Candidate himself/herself, and the Agency cannot under any circumstances be held liable in the event of any misrepresentation, discrepancies, omissions, and errors or otherwise in such information. The responsibility rests with the Client to satisfy himself/herself as to the suitability of the Candidate, including, without limitation, his/her capabilities, state of health, integrity, honesty and other requirements.

3.5 The final decision as to the placement of the Candidate in the employ of the Client rests with the Client. Agency and/or its employees accept no responsibility or liability whatsoever for any losses, costs or damages arising directly or indirectly from the actions of the Candidate or the appointment of the Candidate by any person.

4. EMPLOYMENT OFFERS

4.1 The Client agrees to forward all documentation pertaining to employment offers to the Agency and will not entertain the Candidate by means of making an employment offer without prior consultation and communication with the Agency. The Client agrees that any employment offer to the Candidate will be discussed with the Agency before communicating the same to the Candidate.

4.2 The Client agrees that it will not employ the Candidate prior to both the Client and the Candidate signing a written employment offer and whereby the Agency had not been given the opportunity to study the employment offer.

5 PLACEMENT FEES

5.1 A "Placement Fee" is the amount that is payable by the Client to the Agency upon commencement of employment, assignment, or engagement of the Candidate by the Client, and is determined according to the formulae stated in 5.4. VAT is payable on the Placement Fee.

5.2 The Placement Fee shall be determined by means of reference to the letter of appointment, or written correspondence providing the remuneration details of the Candidate. In the event that details cannot be obtained by the Agency, or there is a dispute over the terms of the remuneration package, the Agency shall be entitled to calculate its terms by means of reference to the remuneration package earned by the Candidate in the last year of his or her prior employment, engagement or assignment, or the market value of the Candidate, whichever is the greater. A manager within the employ of the Agency shall be competent to determine the market value as described herein. Within 30 (Thirty) days of commencement of employment or engagement, the Agency shall be entitled to request a copy of the Candidate's salary slip or remittance slip for purposes of verifying the remuneration details, and the Client shall be obliged to provide the Agency with same immediately upon request.

5.3 The Placement Fee is payable within 14 (Fourteen) days of the date of commencement of employment, engagement or assignment by the Candidate. The Agency shall deliver a tax invoice to the Client on the date of commencement of employment, engagement or assignment, or as soon thereafter as is reasonably possible. The placement fee is due and payable within the said 14 (fourteen) days irrespective of the delivery of the tax invoice.

- 5.4 The Placement Fee that is payable by the Client to the Agent is set out below:
- 5.4.1 **15% (FIFTEEN PERCENT)** of the total annual remuneration package offered to the Candidate.
- 5.5 For the purposes of establishing a Candidate's total annual remuneration where Candidate is employed on a "cost to company basis", is the value of all contributions made by an employer in respect of medical aid, pension and provident funds, allowances, 13th cheque or guaranteed bonus and such-like shall also be taken into account.
- 5.6 The onus rests on the Client to determine the annual remuneration package and to provide the Agency with details of any expected amendments to the package, including expected increments or increases in the package during the course of the year.
- 5.7 In the event that the Candidate is expected to earn on an OTE (On Target Earnings) basis, or on a commission basis, the annual package will be determined on the assumption that the target on which earnings will be based has been met by the Candidate, unless otherwise agreed between the Agency and the Client, in writing.
- 5.8 The Agency's invoices are subject to VAT and all accounts are payable 14 days from the date of the invoice. Should any invoice be due and unpaid after 14 days then all invoices raised shall become immediately due and payable.
- 5.9 Payment is due within 14 days of the date of commencement of employment. Interest will be charged on all overdue accounts at a rate equal to 2% (Two Percent) above the prime rate charged by the Agency's banking institution at the time of indebtedness. A certificate signed by a manager of the Agency's banking institution shall constitute *prima facie* proof of the prevailing prime rate at the relevant time.

6. GUARANTEE

- 6.1 The Agency prides itself on providing Candidates that are technically competent to render the required services.
- 6.2 As a result, the Agency shall provide a guarantee in respect of any Candidate placed by it and in respect of which it has received payment of the full fee within 14 (Fourteen) days of the date of commencement of employment, assignment or engagement, on the following basis:
- 6.2.1 the Client must have notified the Agency in writing of the termination / intended termination from the employment of the client by the Candidate and given the Agency a reasonable opportunity to rectify the situation;
- 6.2.2 the guarantee will be extended once the Candidate's services have been terminated;

- 6.2.3 the dismissal or termination of employment, assignment or engagement must have been effected within 90 days of the commencement of employment, assignment or engagement.
- 6.3 Once the dismissal or termination of employment, assignment or engagement has been effected, the Agency undertakes to replace the Candidate with a Candidate who possesses similar qualifications and who is satisfactory to the Client, at no extra charge to the Client.
- 6.4 If the replacement Candidate earns more than the Candidate initially placed, the fee will be recalculated on the annual package offered to the replacement Candidate, in accordance with the formulae stipulated above, and any discrepancy between the initial fee and the recalculated fee shall be paid by the Client to the Agency upon delivery of an invoice in regard thereto.
- 6.5 The Agency must be given a reasonable and exclusive opportunity to replace the Candidate, and the Client is obliged to offer its full assistance and co-operation in regard thereto. Upon replacement, the Agency shall not extend any further guarantees to the replacement Candidate.
- 6.6 In the event that the Agency is unable to place an alternative Candidate with the Client within the mutually agreed time, which will not exceed sixty (60) days, the Agency shall furnish the Client with a credit note as follows:
- 6.6.1 dismissal or termination within 30 days of the commencement date, a credit of **50%** off the fee received, against the next placement made by the Agency;
- 6.6.2 dismissal or termination between 31 and 60 days of the commencement date, a credit of **40%** off the fee received, against the next placement made by the Agency;
- 6.6.3 dismissal or termination between 61 and 90 days of the commencement date, a credit of **30%** off the fee received, against the next placement made by the Agency;
- 6.7 The credit must be utilised within six months of the date upon which it is granted, failing which it will automatically lapse.
- 6.8 The guarantee will be considered void under the following circumstances:
- 6.8.1 The Client or its managers created an environment which became intolerable for the Candidate/incumbent in which the Candidate/incumbent felt either victimised, unduly micro-managed to such an extent that it became degrading on the Candidate, or created or caused an intolerable working condition, and/or contravened the Labour Relations and/or the Basic Conditions of Employment Acts and/or due to a Constructive Dismissal and whereby a replacement Candidate would be subjected to the same employment conditions and;

- 6.8.2 The Client reneged on promises made to the Candidate during the interview stage that was not realised after the Candidate started work which resulted in the Candidate resigning within the Guarantee Period;
- 6.8.3 The Candidate resigned due to any of the conditions described in par 6.8 and provided the Agency with a sworn affidavit with regard to the above, and/or has instituted proceedings against the Client for an Unfair Dismissal or Constructive Dismissal case at the CCMA and/or;
- 6.8.4 the resignation of the Candidate was not due to any fault of the Agency and neither due to non-compliance of the competency requirements for the role/position in which the Candidate was employed and that the Candidate resigned because of any other irregular or unfair labour practice by the Client.
- 6.9 The guarantees offered in this agreement are not applicable with regard to fixed-term contracts that are agreed upon between the Client and the Candidate that are for a period of less than 12 months. Fixed-term contracts are further explained in clause 8 of this agreement.

7. WORKING RELATIONSHIP

- 7.1 The Client will undertake to provide the Agency with continuous feedback regarding the status of the Candidate and the advertised position. Should any changes arise the Client will endeavour to contact the Agency within the shortest possible time, to avoid the wastage of man-hours by the Agency.
- 7.2 The Client agrees to match any expectations created by the advertised position either given in writing to the Agency or mentioned to the Candidate in an interview. This is to prevent the Candidate from being disadvantaged by false expectations with regards to salary and furthermore to protect the reputation and professional integrity of the Agency.
- 7.3 The Employer and the Agency will at all times endeavour to maintain a courteous relationship. This is accomplished by both parties meeting the expectations and obligations stated in this contract and those that could be expected between two parties operating in professional surroundings.

8. CLAUSES PERTAINING TO FIXED-TERM CONTRACTS

This agreement is subject to clauses 8.1. to 8.4. in the event of Fixed-Term Contracts entered into between the Client and the Candidate:

- 8.1 The placement fee that is payable by the Client to the Agent is set out below:
- a) fixed-term contract placements less than 6 months, a flat fee of 35% (Thirty Five Percent) of Cost to Company remuneration for the duration of the contract.

b) fixed-term contracts above six months, but not exceeding 11 months and 25 days, a flat fee of 25% (Twenty Five Percent) of Cost to Company remuneration for the duration of the contract.

8.2 The client has an option to either administer the salary of the Candidate directly or appoint the services of the Agency to administer the salary of the Candidate at an administration fee of 15% of the Candidates' salary per month.

8.3 For the purposes of Agency fees and billing, all fixed-term contracts between the Client and the Candidate for a period of 12 months and above are considered to be a permanent placement and the fees as described in clause 5.1 is payable.

8.4 Replacement guarantee

Replacement guarantee is not subject to rebates, however, should the engagement of any Candidate terminate within a period of three (3) months from the date of engagement, the Agency shall endeavour to seek a replacement Candidate at no extra cost to you provided that:

- i) the Candidate leaves of his/her own volition and not due to any redundancy measures; and
- ii) the Agency invoice has been settled within fourteen (14) days of the invoice date.

The Agency reserves the right not to replace the original Candidate in the event of employer misconduct.

Guarantees offered and described in clauses 6.1. to 6.8. are applicable for Fixed-term Contracts of 12 months and above.

9. GENERAL

9.1 A fee will be due and payable by the Client to the Agency in the event that the Client employs, appoints or assigns the services of the Candidate introduced to it by the Agency within a period of 12 (Twelve) months from the date of such introduction, irrespective of whether the Candidate is employed, appointed or assigned in a different division or department of the Client, by a different representative of the Client, or in a different capacity, and irrespective of whether the Candidate previously rejected or declined an offer made to him or her by the Client, or whether any other party is or may be entitled to a fee for the introduction of the Candidate to the Client after the Agency's introduction.

9.2 A fee will be payable by the Client to the Agency in the event that the Client refers the Candidate or provides the details of a Candidate to any third party, who then employs, appoints or assigns the Candidate introduced to the Client by the Agency within a period of 12 (Twelve) months from

the date of such introduction, irrespective of whether the Candidate is employed, appointed or assigned by that third party in a different capacity.

- 9.3 A Permanent placement fee is payable by the client in the event that the Client wishes to appoint a Candidate that is currently within a temporary assignment, engagement, or contract including fixed term and non-fixed term contracts, on a permanent basis within their organisation, irrespective of whether the Candidate is employed, appointed or assigned in a different division or department of the Client, by a different representative of the Client, or in a different capacity, and irrespective of whether the Candidate previously accepted, rejected or declined an offer made to him or her by the Client or if the Candidate was previously unsuccessful for a role and was thereafter subsequently appointed, or whether any other party is or may be entitled to a fee for the introduction of the Candidate to the Client after the Agency's introduction. Irrespective of whether the offer was extended while the Candidate was within the Temporary assignment or Contract or the contract has ended or been terminated either by the client or the Candidate, a Permanent placement fee is payable.
- 9.4 In the event of a temporary assignment or contract of a Candidate ends or be terminated by the client or the Candidate ends or terminates his assignment or contract, a fee is payable by the client should the client appoint the Candidate within 12 months from the date of such termination or assignment ending based on the nature of appointment irrespective of whether the Candidate is being placed within a temporary assignment, contract or Permanent employment. Please refer to the placement fees schedule payable for temporary, contract and permanent placements.
- 9.5 In the event that the Client employs any employee of the Agency, the Client shall pay a fee equal to 25% (twenty five percent) of the annual package offered to such employee by the Client, in accordance with these terms and conditions.

10. AGENCY UNDERTAKING AND OBLIGATIONS

- 10.1 The Agency agrees that it will adhere to strict ethical practices in the recruitment of Candidates while the Agreement is in force.
- 10.2 The relationship of the Agency to Client under this Agreement shall be that of an independent Agency. The Employees and sub-agents of one party shall not be considered in any way to be employees and sub-agents of the other party. The Agency shall have complete control over the direction and manner in which the Agency performs the services required by it in this Agreement. The Client, however, shall have the right to designate the requirements and activities to which the Agency will direct its efforts and/or services under the terms of this Agreement.

- 10.3 The Client will undertake to provide the Agency with continuous feedback regarding the status of the Candidate and the advertised position. Should any changes arise the Client will endeavour to contact the Agency within the shortest possible time, to avoid the wastage of man-hours by the Agency.
- 10.4 The Client agrees to match any expectations created by the advertised position either given in writing to the Agency or mentioned to the Candidate in an interview. This is to prevent the Candidate from being disadvantaged by false expectations with regards to salary and furthermore to protect the reputation and professional integrity of the Agency.
- 10.5 The Client and the Agency will at all times endeavour to maintain a courteous relationship. This is accomplished by both parties meeting the expectations and obligations stated in this contract and those that could be expected between two parties operating in professional surroundings.
- 10.6 The Client agrees that any employee acting on its behalf and who solicits the services of the Agency, that such an employee is acting within the Client's mandate and will be bound to the terms set out herein.

11. ADDITIONAL SERVICES

Any additional services, other than Permanent Recruitment or Contract Recruitment will be acknowledged in a separate statement of work between you and the Agency.