

MORGAN PHILIPS

EXECUTIVE SEARCH

Terms of Business

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT (“the Agreement”)

1. ACCEPTANCE OF TERMS

1.1. The following Terms and Conditions of Business (“**Terms**”) shall be deemed to have been agreed and accepted by yourselves (the “Client”) upon the confirmation of a search of other consultancy assignment, order for the supply of services, or the introduction (as defined below) of any candidate by Morgan Philips UK Limited (“**Morgan Philips UK**”) to the Client. For the purpose of these Terms, the Client shall include any parent, subsidiary or associated company of the Client, or any successor, whether by reorganisation, merger, sale or otherwise.

1.2 Any variation to these Terms must be agreed in writing by an authorised signatory for Morgan Philips UK.

1.3 In these Terms, “**Engagement**” means the engagement, employment, or use of the candidate by the Client, whether under a contract of service or for services, partnership or otherwise and “Engages” or “Engaged” shall be construed accordingly.

2. CONSULTANCY ASSIGNMENTS

2.1 Where Morgan Philips UK is engaged by the Client on a Consultancy Assignment (including Strategic or Human Resource Consultancy, Training, Executive Coaching or Outplacement or any other project-based advice), all fees and project costs will be agreed with the Client in writing. Fees will be charged on an hourly or daily basis, ranging, according to the level of seniority of the consultant engaged on the consultancy project, from £150 per hour to £250 per hour.

2.2 In respect of Strategic and Human Resource Consultancy and Executive Outplacements, 50% of the total agreed or estimated assignment fee is payable prior to commencement of work, subject to a maximum first stage fee of £20,000 + VAT. The remaining balance is payable upon completion of assignment.

2.3 In respect of Training programmes, fees for the delivery of organisation-specific training courses are payable in advance and are due regardless of failure to attend. Cancellation terms are detailed with each training programme.

3. FEES

3.1 The Client shall pay to Morgan Philips UK the fee in accordance with these Terms. The fee shall be calculated at the rate of 30% of the successful candidate’s projected gross remuneration (as defined below) in the first year of the Engagement (“**Fee**”). The candidate’s projected gross remuneration in the first year of the Engagement (hereafter the “**Gross Remuneration**”) comprises the following constituent elements and is calculated as below:

3.1.1 **Basic Salary** (where the candidate is a salaried employee). The basic salary will be the salary at which the candidate commences the Engagement, but will include any uplift during the course of the first 12 months of the Engagement, if the amount of such uplift is certain and agreed at the time of commencement of the Engagement; and

3.1.2 **Bonus** (of whatever nature, including, but not limited to, signing-on bonuses, discretionary bonuses, and guaranteed bonuses). Where a bonus is discretionary, the estimated value of such bonus will be agreed with the Client at the time of negotiation of the offer with the candidate and be calculated on the basis of a median rate of the upper and lower likely amounts for such bonus, e.g. if the anticipated discretionary bonus rate quote is 25%-35%, the estimated value of the bonus would be 30%; and

3.1.3 **Other forms of remuneration.** These will include housing/accommodation allowances; car allowances (where a car is provided, this will be assessed as remuneration at the rate of £6,000 or the value attributed to the car allowances by the Client, whichever is greater).

3.2 The Client agrees to retain the services of Morgan Philips UK on an exclusive basis. Any candidate introduced by a third party or by direct application relating to the assignment may not be accepted by the Client and must be notified to Morgan Philips UK. In the event that such candidate is employed by the Client, the Fee shall be payable to Morgan Philips UK irrespective of how the candidate was sourced originally.

3.3 In the case of a team “bolt on”, Morgan Philips UK shall charge a 30% success fee as above for every candidate introduced as part of the team. For these purposes, support staff shall be charged at the reduced rate of 25%.

3.4 For the avoidance of doubt, in the event that a candidate becomes Engaged in a role which is not materially different to the role for which the candidate was originally introduced’ the Client remains liable to pay the Fee.

4. RETAINED RECRUITMENT ASSIGNMENTS

4.1 Where Morgan Philips UK is engaged by the Client on a Retained Search Assignment or a Retained Advertised Selection Assignment (hereafter collectively a “**Retained Recruitment Assignment**”), the following specific Terms shall apply:

4.2 Introductions

An introduction is made and is effective in relation to any target candidate, individual, firm, body or organisation named on the shortlist or longlist presented to the Client for a Retained Recruitment Assignment, where such candidate is Engaged within a period of 12 months from the date of presentation of such shortlist or longlist, whichever is the latest. In the event of such Engagement, the full Fee will be payable to Morgan Philips UK.

4.3 Unless otherwise agreed in writing between Morgan Philips UK and the Client, the Fee for a Retained Recruitment Assignment is payable in 3 stages:

4.3.1 First Stage Fee 1/3 of the Fee (payable on Morgan Philips UK’s acceptance of instruction from the Client) or £6,000 + VAT, whichever is the greater.

4.3.2 Second Stage Fee 1/3 of the Fee (payable on presentation of shortlist)

4.3.3. Completion Fee Balance calculated on actual Gross Remuneration (as calculated above); this is payable upon the candidate’s acceptance of the Client’s offer of an Engagement (“Completion Fee”) and adjusted to account for any difference between estimated and actual salary package.

4.4 All search-related expenses of whatever nature (including travel) incurred by Morgan Philips UK in relation to a Retained Recruitment Assignment being undertaken on behalf of the Client shall be agreed in advance between Morgan Philips UK and the Client. Expenses are payable within seven (7) days of the Client's receipt of a written invoice together with appropriate receipts. Costs in respect of advertising shall be agreed on a case-by-case basis and shall be payable by the Client.

4.5 Cancellation by the Client

4.5.1 In the following situations the Client will be deemed to have cancelled the Retained Recruitment Assignment (each constituting a "**Cancellation**", and "**Cancels**" shall be construed accordingly):

- a) Withdrawing a Retained Recruitment Assignment before its conclusion
- b) Putting such assignment on hold for a period of in excess of 3 months
- c) Materially changing the original brief (such material change being constituted by, but not limited to, a change in the level of experience of the candidate sought, a change in the geographical location of the proposed Engagement for the successful candidate; or a change in the remit, function, or make-up of the role)
- d) Failing to take such steps as are reasonably required of the Client in order to enable the assignment to be completed (including, but not limited to the Client failing within a reasonable period of time to give feedback to Morgan Philips UK on CVs/profiles/interviews of candidates introduced to the Client by Morgan Philips UK as part of the Retained Recruitment Assignment).

4.5.2 In the event that the Client Cancels a Retained Recruitment Assignment, the Client shall pay to Morgan Philips UK a cancellation fee in an amount equivalent to 20% of the Fee due in addition to any fee already paid or due (for example, under clause 4.3) and any expenses incurred.

4.6 Morgan Philips UK reserves the right to terminate any Retained Recruitment Assignment immediately without liability for compensation to the Client in the event that the Client:

- 4.6.1 Becomes insolvent, bankrupt or applies for an administration order or enters into a voluntary arrangement with its creditors
- 4.6.2 Being a partnership, dissolves: in such event, the partners will remain jointly and severally liable for any fees due and payable to Morgan Philips UK hereunder.
- 4.6.3 Is in breach of any of the terms of its agreement with Morgan Philips UK (including payment terms)
- 4.6.4 Instructs any personnel of Morgan Philips UK to provide services which are either illegal, unethical or contravene accepted codes of professional practice

5. CONTINGENCY RECRUITMENT

5.1 Where the Client engages a candidate introduced by Morgan Philips UK outside the parameters of a Retained Recruitment Assignment (a "**Contingency introduction**"), the provisions of this clause 5 shall apply.

5.2 A Contingency Introduction is made and is effective on the date that the Client receives oral or written notification of the candidate from or through Morgan Philips UK, where such introduction leads to the

Engagement of the said candidate by the Client. The Contingency Introduction will remain valid for a period of 12 months from the date that is effected.

6. INVOICING AND PAYMENT

Invoices will be rendered at the 3 stages (referred to in clause 4.3) of a Retained Recruitment Assignment. In the case of a Contingency Introduction (defined above), invoices will be rendered upon the candidate's acceptance of the Engagement. All fees due hereunder are payable by the Client within a period of seven (7) days from receipt of invoice. Where applicable, VAT will be charged at the prevailing rate. The Guarantees set out below will only apply if these terms of payment are strictly adhered to.

7. GUARANTEES

7.1 Should the Engagement of the successful candidate resulting from the Retained Recruitment Assignment, or the Contingency Introduction terminate within the first 3 months from the first day worked by the candidate, or should the candidate not actually commence the Engagement, Morgan Philips UK will use all reasonable endeavours to resource a replacement candidate, but no refund fees will be made to the Client. The obligation to resource a replacement candidate is subject to the following conditions:

- a) The termination being justified or the candidate leaving of his or her own volition and not as the result of redundancy or any reorganisation of the Client's business
- b) The Fee having been paid in full within seven (7) days of receipt of invoice
- c) The Client notifying Morgan Philips UK in writing within 7 days of the termination of the Engagement

7.2 If, after a period of 6 months from the date of termination of the Engagement of the original successful candidate, no replacement candidate has been resourced, the obligation to resource such replacement candidate will cease.

8. SUITABILITY

Morgan Philips UK endeavours to ensure the suitability of any candidate introduced to the Client by obtaining confirmation of the candidate's identity; checking the candidate has the experience, training, qualifications and any authorisation which the Client considers necessary and has advised to Morgan Philips UK in writing in a job specification or otherwise or which may be required by law or by any professional body; and that the candidate is willing to work in the position which the Client seeks to fill. Morgan Philips UK makes no warranty, express or implied as to the foregoing suitability and it remains the Client's entire responsibility to ensure that the candidate is suitable for the Client's requirements. The Client warrants that there will be no health and safety risk to the candidate in working for the Client and if there are any such risks, the Client agrees to notify Morgan Philips UK, in writing of the nature of such risks and what steps have been taken by the Client to minimise such risks. The Client shall be responsible for obtaining work and other permits, for the arrangement of medical examinations and/or investigations into the medical history of the candidate and satisfying any medical and other requirements or qualifications required by the Client.

9. LIABILITY

Except in the case of death or personal injury caused by Morgan Philips UK's negligence or in any other circumstances in which Morgan Philips UK's liability may not be limited at law, Morgan Philips UK shall not be liable under any circumstances for any loss, expense or damage suffered or incurred by the Client arising from or in any way connected with the introduction of the candidate or the Engagement or from the failure of Morgan Philips UK to introduce a candidate. The Client shall indemnify Morgan Philips UK against any costs, including legal costs, claims, damages, and expenses incurred by Morgan Philips UK arising from or in any way connected with the introduction of the candidate to, or Engagement of the candidate by, the Client.

10. ANTI-DISCRIMINATION

Neither party shall unlawfully discriminate against any candidate, whether directly or indirectly, on grounds of sex, sexual orientation, marital or civil partner status, gender reassignment, race, religion or belief, colour, nationality, ethnic or national origin, disability, or age. Each party will ensure that each candidate is considered and / or assessed for a particular role in accordance with the candidate's merits, qualifications, and technical abilities to perform the role. Morgan Philips UK will not accept instructions from a Client who indicates their intention to discriminate unlawfully. The Client shall indemnify Morgan Philips UK against any claim or liability howsoever incurred by Morgan Philips UK arising from following the instructions of the Client in the provision of recruitment services.

11. CONFIDENTIALITY

All introductions are confidential. The information concerning the candidate including his or her name, address, CV, and all other details relating to the candidate belong to Morgan Philips UK and the Client may only use that information for the purposes of interviewing the candidate and deciding whether or not to engage his or her services and for no other purpose whatsoever. Should the Client decide not to engage the services of the candidate the Client agrees that it will not retain any documents and other records or data held concerning the candidate. The Client will not pass any information concerning the candidate to any third party. In the event of the Client's breach of this clause, such breach resulting in the Engagement of the candidate by any third party, the Client will pay the Fee to Morgan Philips UK as if the Client had Engaged the candidate.

12. COMPLIANCE WITH RELEVANT REQUIREMENTS

12.1 The Client shall:

- a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the bribery act 2010 ("Relevant Requirements").
- b) not engage in any activity, practice, or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice, or conduct had been carried out in the UK.
- c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant
- d) Requirements and sub-clause (b) above and will enforce them where appropriate.
- e) promptly report to Morgan Philips UK any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this Agreement.
- f) provide such supporting evidence of compliance with this clause 11 as Morgan Philips UK may reasonably request.

12.2 The Client shall further ensure that any person associated with the Client who is receiving services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in this clause 11 (“**Relevant Terms**”). The Client shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to Morgan Philips UK for any breach by such persons of any of the Relevant Terms.

13. GENERAL

- a) Where any candidate introduced by Morgan Philips UK to the Client is already known to the Client as a result of direct contact or contact through a third party, the Client shall notify Morgan Philips UK of that fact in writing within 3 working days from the Introduction, failing which the Client will be liable to pay the Fee in the event of its Engagement of that candidate.
- b) The Client undertakes that during this Agreement and for 12 months thereafter it shall not, directly, or indirectly, solicit or entice away any personnel of Morgan Philips UK with whom the Client has had contact for personnel for employment, engagement, or other use by the Client. If the Client breaches this clause, it shall be liable to pay to Morgan Philips UK a fee equivalent to all losses incurred by Morgan Philips UK including, without limitation, costs of employing temporary staff to cover such position, administration fees and any other costs or expenses incurred by Morgan Philips UK as a result.
- c) No third party shall have any rights under the Contracts (Rights of Third Parties) Act 1999 in connection with these Terms.
- d) The parties agree that a failure or delay by either party to enforce any of the provisions set out in these Terms shall not be construed as a waiver.
- e) If any provision or any part of these Terms is held to be illegal or unenforceable in whole or in part under any enactment or rule of law such provision or part shall be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.
- f) Both parties each undertake to comply with all laws, rules, and regulations applicable to the subject matter of this Agreement (including but not limited to the Data Protection Act 2018 as may be amended from time to time). Please refer to the Data Processing Agreement below for additional clauses.
- g) This Agreement is governed by English law and all disputes arising from these terms shall be subject to the exclusive jurisdiction of the English Courts.

**Duly authorised for and on behalf of
Morgan Philips UK Limited**

**Duly authorised for and on behalf of
The Client**

Company:

Name:

Name:

Position:

Position:

Date:

Date:

DATA PROCESSING AGREEMENT

1. Processing and relation between the Parties

For purposes of this Annex, capitalized terms such as "Personal Data", "Controller", "Processor" or "Processing" shall have the meaning set forth in article 4 of the General Data Protection Regulation (GDPR)

The "**Agreement**" means the primary contract between Morgan Philips and its Customer.

The "**Services**" means the services provided by Morgan Philips under the Agreement.

In providing the Services, Morgan Philips may act as a Processor to Customer or as a Controller.

The Data Processing entrusted to Morgan Philips are described in article 10 and depend on the nature of the service that the Customer has outsourced to Morgan Philips.

The Processes for which Morgan Philips is a Data Controller are set forth in article 11.

2. How Morgan Philips Processes Personal Data

Personal Data is collected, recorded, and stored in accordance with the provisions of the GDPR, as well as with any national law that may apply.

The Data processed by Morgan Philips is stored on servers located in the United Kingdom. As a reminder, the United Kingdom benefits from an adequacy decision allowing the circulation of Data with the European Union.

2.1 Data processed by Morgan Philips as Controller

Morgan Philips determines the characteristics of the Processing for which it is responsible.

In particular, Morgan Philips determines the duration of the Processing and is responsible for ensuring that the rights granted to Data Subjects (right of access, rectification, etc.) are properly exercised.

In the event of a Data breach, as defined in Article 33 of the GDPR, Morgan Philips is solely responsible for complying with its notification obligations.

2.2 Data processed by Morgan Philips as Processor

Personal Data processed by Morgan Philips on behalf of the Controller will be retained for two years after the end of the mission, in order to ensure the follow-up of the mission.

Morgan Philips processes Personal Data in accordance with the instructions of the Client. Morgan Philips does not acquire any rights to the processed Data.

Morgan Philips will inform the Client if it believes that any of its instructions could violate the GDPR.

Information about the processing of Personal Data can be obtained by sending an email to morganphilipsoperations@morganphilips.com

Morgan Philips does not process Personal Data for any purpose other than those specified by Client.

3. Security and confidentiality

3.1 Morgan Philips' commitments

Morgan Philips will take all reasonable steps to ensure that access to Personal Data is strictly limited to those persons who may be involved in providing the Services.

In particular, Morgan Philips will ensure that persons authorized to process Personal Data for the purposes of the Agreement are bound by a duty of confidentiality or are subject to an appropriate duty of confidentiality.

Morgan Philips will ensure that its employees and any of its own sub processors comply with applicable data protection laws and are properly trained in their obligations with respect to the processing of Personal Data.

It also undertakes to implement sufficient and appropriate technical measures to preserve the integrity and confidentiality of the Personal Data and to protect it against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access and against any other form of unlawful processing.

These measures must ensure, according to the state of the art and the costs associated with their implementation, a level of security appropriate to the risks presented by the Processing and the nature of the Personal Data to be protected. Morgan Philips is committed to ensuring that only secure means of communication are used to process Personal Data.

3.2 Client's commitments

Client agrees to maintain the same level of security and confidentiality as Morgan Philips with respect to Data submitted by Morgan Philips in connection with the Services.

4. Termination of the Agreement

Where Morgan Philips acts as Processor, Morgan Philips will return or destroy Personal Data processed on behalf of the Client within a maximum of thirty days of the termination of the Agreement.

Client acknowledges that where Morgan Philips has been engaged to recruit an employee, Morgan Philips is entitled to retain the employee's contact details for the purposes of career management.

5. Record of Processing of activities

Where Morgan Philips is a Subcontractor, this Schedule constitutes a register of sub-processing activities, pursuant to the provisions of Article 30, 2° of the GDPR.

6. Exercise of rights of data subjects processed by Morgan Philips as a Processor

Where applicable, Morgan Philips will inform the Client as soon as possible of any access, rectification, deletion, or portability request received by Morgan Philips.

The Client remains responsible for responding to access, rectification, deletion, and portability requests received from Morgan Philips within the time limits set by the GDPR.

In case of difficulty, the Client will inform Morgan Philips.

In the event of a dispute, data subjects may refer the matter to the CNIL or any competent authority.

7. Notification in case of a data breach

In the event of an incident that may affect the security of the Personal Data, in the event of a probable or proven breach of the integrity of the Personal Data, or in the event of a probable or proven breach of the rules of confidentiality applied to the Personal Data, Morgan Philips will inform the Client of the incident in question as soon as possible.

Unless circumstances make it impossible to meet the deadline, the information will be provided in a manner that allows the Client to comply with its obligations to notify the CNIL and the data subjects in accordance with Article 33 of the GDPR.

In the event of an incident as referred to in this article, Morgan Philips will make every effort to immediately correct the problem that caused the incident and will work with the Client to respond, as appropriate, to requests from the Client, the CNIL and data subjects.

8. Sub Processors

Where applicable, Morgan Philips will only use sub processors that comply with the provisions of the GDPR. Morgan Philips maintains a list of its sub processors and will provide this list to the Client upon request. In the event that a sub processor does not, or no longer, provides the safeguards required by the GDPR, Morgan Philips will immediately cease working with the sub processor.

In any event, Morgan Philips will remain liable to the Client for the acts, faults, or omissions of its sub processors.

9. Transfers outside of the European Union

Morgan Philips will not transfer Personal Data outside the European Union in connection with the provision of the Services.

Where the provisions of the Services require the transfer of Data to a third party outside the European Union, Morgan Philips will only transfer Data if the importing third party is located in a country that has received an adequacy ruling, or subject to the prior execution of standard contractual clauses.

10. Description of the Processing performed by Morgan Philips in connection with the provision of the Services as a Data Controller

10.2 EXECUTIVE SEARCH

PROCESSING	TYPE OF DATA	RETENTION PERIOD
Processing external applications	First and Last Name Contact details (email, phone, address) Items requested in the contact form. Contents of the application and CV	Duration of the recruitment process
Sourcing of potential candidates	First and Last Name Function Firmographic data of the employer Business Contact Information (email/ phone/ employer name/ address)	Duration of the recruitment process
Creation of a pool of candidates	First and Last Name Contact details (email, phone, address) Items requested in the contact form. Content of the CV	2 years + renewal of the authorization to retain the data
Management of external recruitment interviews	First and Last Name Contact details (email, phone, address) Items requested in the contact form. Content of the CV Interview notes	Duration of the recruitment process
Management of personality tests for external candidates	First and Last Name Contact details (email, phone, home address) Content of the personality test	Duration of the recruitment process
Creation of CV videos	First and Last Name Voice age Functions Business Contact Information (email/phone/address) Contents of the CV Video content	Duration of the recruitment process