

TERMS AND CONDITIONS

EXECUTIVE SEARCH | MANAGEMENT CONSULTANCY

Heads! International Limited (company no. 13164917) with its registered office at 42 Berkeley Square, Mayfair, London W1J 5AW, United Kingdom (“Heads!”) supports its clients with the search for and the selection of executives and specialists (executive search), and also in the area of management consulting.

A) GENERAL

- 1) These terms and conditions (**Terms**) shall apply to any agreement or arrangement for the provision of services (**Contract**) between Heads! and the client (**Client**) to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by laws, trade custom, practice or course of dealing.
- 2) The Client’s order for services (**Order**) to be provided by Heads! constitutes an offer by the Client to purchase the services as are set out in the Client’s purchase order and/or the Client’s acceptance of an offer or quotation by Heads! (as the case may be), always in accordance with these Terms
- 3) The Order shall only be deemed to be accepted when Heads!
 - a) either issues written acceptance of the Order (by e-mail, fax or post), or
 - b) following receipt of an Order, commences performance of such Order,at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 4) Each Order is accepted by Heads! on the basis that Heads! will provide the services on an exclusive basis to the Client. Accordingly, during the duration of the Contract, the Client shall neither directly nor indirectly search for a candidate for the advertised position for which Heads! is engaged under the Contract.

B) CLIENT PROTECTION

- 1) Subject to clauses B 2) and B 3) below, for a period of six months following completion of a successful search assignment under the Contract, i.e. after a work- or employment contract (or analogous contract) with the last placed candidate under the Contract has been concluded, Heads! shall not in the course of carrying out a search assignment for any third party, solicit or endeavour to entice away any employees of the Client that occupy or are engaged for the same (or similar) hierarchical tier and/or job role as the placed candidate. If the Client is a holding company, subsidiary, separate division and/or branch (each of the aforesaid being an **Client Entity**) within a group of companies and/or (as the case may be) within a single organisation, firm or company, this restriction shall apply only in respect of the Client Entity for which Heads! has carried out the relevant search assignment under the Contract. The restriction shall not apply to any other Client Entity. For the purposes of these Terms, the expressions **holding company**, **subsidiary company** and/or **group company** shall have the meaning as defined in or under S.1159 of the Companies Act 2006.
- 2) The restriction in clause B 1) will not apply
 - a) if the employee of the Client approaches Heads! of their own volition or otherwise in response to a national or regional advertising campaign; or
 - b) in respect of any services provided by Heads! in a different country to the country in which the relevant Contract was performed; or

- c) the employee of the Client is, at the time of being approached by Heads!, primarily based in any country other than the country in which the relevant Contract for the Client was performed.
- 3) The restrictions in clause B 1) shall further not apply to Heads! if the Client and/or the relevant Client Entity:
 - a) ceases to carry on business, discontinues its operations or is being wound up; or
 - b) is subject to bankruptcy, insolvency, administration, receivership, liquidation or probate proceedings or a similar procedure (including any analogous procedure in any other jurisdiction), or if such proceedings have not been initiated, due to lack of sufficient assets, or if it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or commences any negotiations with any class of its creditors with a view to rescheduling any of its debts; or
 - c) is subject to a change in the controlling majority of the beneficial owners of the Client, causing the termination of the Contract with Heads!; or
 - d) is in arrears with its payment obligations to Heads!.

C) CONFIDENTIALITY

- 1) Heads! as well as the Client shall maintain in strict confidence and shall not at any time disclose to any person (except as permitted under this clause C), any data, information and documentation made available to the other party under and/or in connection with the Contract, including, without limitation, any data, information and documentation relating to the business, affairs, customers, clients, suppliers, candidates, intentions, or market opportunities of the other party (Confidential Information).
- 2) Subject always to clauses C 4) to 5), each party may disclose the other party's Confidential Information:
 - a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause C; and
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 3) Subject to clauses C 4) to 5), neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 4) Any candidate profiles submitted to the Client by Heads! constitute Confidential Information of Heads! and will at all times remain the property of Heads!. Any candidate profile supplied to the Client shall be used by the Client only to the extent required for filling the specific vacancy and for the respective selection process described in the Contract. Candidate profiles and any further documents relating to a candidate are provided to the Client only for this purpose and shall not be used for any other purposes by the Client. If the Client rejects any candidate, or a candidate refuses any offer of a job or interview with the Client, then the Client must immediately return all such information to Heads! and delete any electronic copies of the relevant candidate's details from the Client's systems and records.
- 5) Any disclosure of any candidate details by the Client to any third parties is prohibited without the prior written consent of Heads! or unless such disclosure is reasonably necessary for the Client to complete the search and recruitment process. Any breach of this clause C 5) by the Client shall entitle Heads! to immediately terminate all Contracts between the Client and Heads! and the Client will indemnify Heads! for all claims, losses and expenses arising out of and/or in connection with any such breach.
- 6) Insofar as Heads! is required by any candidate to correct, delete or limit processing of candidate profiles or personal data therein contained, the Client will comply with all measures requested by

Heads! in order to comply with the candidate's request promptly (but in each case within 24 hours) upon notification by Heads! of the candidate's request. Irrespective of any individual request, the Client shall delete all candidate profiles (save any profile which is subject to an active assignment) after a period of 6 months following receipt has expired, except where the Client is obliged under any applicable law or under an order of a competent court or authority to retain such information.

D) SELECTION

- 1) To guarantee an optimum candidate selection, all candidates, whether they were approached directly by Heads! or based on the Client's recommendations or wishes, or whether they have applied on their own initiative, are selected and assessed in compliance with the applicable statutory obligations which shall include the Equal Pay Act 1970, Sex Discrimination Act 1975, Race Relations Act 1976, Race Relations (Amendment) Act 2000, Disability Discrimination Act 1995, Human Rights Act 1998, Employment Rights Act 1996, Employment Relations Act 1999, Employment Act 2002, Race Relations Act 1976 (Statutory Duties) Order 2001, Equality Act 2010 and any other legislation relating to discrimination in relation to employment.
- 2) Heads! shall carry out the candidate selection and assessment using reasonable care and skill in accordance with the specification set out in the Contract. The candidate is assessed for suitability and interest, according to verbal and written statements. Heads! does not perform formal background checks on the candidates' legal status (criminal or civil records, bankruptcy or similar). Should the Client require a formal background check, the parties may agree in writing to refer the such background check to an appropriately qualified and authorized expert at the sole cost of the Client. Heads! does not accept any liability for any acts or omissions of such expert.

E) FEES AND EXPENSES

- 1) Heads! shall be entitled to payment of the fees set out in the Contract and to a reimbursement for any out-of-pocket expenses incurred in the course of providing its services. Unless agreed otherwise in the Contract, the fees and expenses due to Heads! under or in connection with a Contract shall be determined and become payable in accordance with this clause E).
- 2) FEES
 - a) Heads! will be entitled to a retainer fee (**Retainer**) as set out in the Contract irrespective of whether or not a search assignment under a Contract has been completed successfully, i.e. with a candidate concluding a work or employment contract (or any analogous contract) with the Client.
 - b) The Retainer shall become due for payment in full on the Commencement Date and/or on such date or dates (if payment in intervals is agreed) as set out in the Contract. Heads! shall be entitled to invoice the Client for payment of the Retainer accordingly.
 - c) On a successful completion of a Contract, i.e. with a candidate concluding a work or employment contract (or any analogous contract) with the Client, Heads! shall be entitled to an increased Retainer payment (**Final Fee**). Unless agreed otherwise in writing, the Final Fee will be
 - in the case of non-executive directors for public companies, an amount equivalent to their annual board fees; and
 - in all other cases, an amount calculated based on the gross annual compensation of the candidate in the first year of the candidate's engagement as agreed by the Client in the work and/or employment contract (or any analogous contract) with the candidate, including all fixed and variable cash salary components, any sign-on bonus, and all short-term, mid-term and long-term incentives e.g. management participation at nominal value or stock option programs, as well as taxable benefits in kind like housing allowances), even if these mature and/or become due for payment after the first year of the candidate's engagement. In the event of any variable or conditional remuneration, it shall be deemed that the candidate will become entitled to receive maximum amount of such variable or conditional

remuneration. In the event of any commission based remuneration (or other performance based compensation) which is not subject to any minimum or maximum payment) then the Client shall pay to Heads! the amount set out in clause E 2 d) below as soon as such remuneration has been confirmed. All pension and social security contributions, shall be excluded for the purpose of calculating the candidate's compensation.

- d) The percentage or other provisions for the determination of the Final Fee will be as expressly set out in the Contract. In the absence of such express agreement, the Final Fee will be an amount equivalent to one third (33%) of the gross annual compensation of the candidate calculated in accordance with clause E 2 c).
- e) The Final Fee shall be due (irrespective of whether or not a candidate was proposed by the Client), once the candidate has concluded a work or employment contract (or any analogous contract) with the Client or with any entity or organization affiliated with the Client (including any holding company or subsidiary company of the Client, or any other subsidiary company of a common holding company). The Final Fee shall also become due for immediate payment, if the candidate proposed by Heads! under the Contract is initially rejected by the Client, but a work and/or employment contract (or any analogous contract) is subsequently concluded between the candidate and the Client or with any entity or organization affiliated with the Client (including any holding company or subsidiary company of the Client, or any other subsidiary company of a common holding company) within 12 months after the date on which the candidate was initially proposed. In either case, the Client shall notify Heads! in writing immediately upon conclusion of the relevant work or employment contract (or any analogous contract) and shall provide Heads! with either a copy of the contract (with any commercially sensitive information redacted), or with a memorandum containing a summary of the agreed terms, or any other evidence of the candidate's remuneration as reasonably required by Heads! to calculate and verify the Final Fee due to Heads!. The Client warrants and represents that the details of the candidate's compensation provided by the Client shall be in all respects true, accurate and up to date.
- f) On successful completion of the assignment under the Contract or on earlier termination, Heads! will invoice the Client for all outstanding amounts then due, including if applicable, the Final Fee, less any amounts of the Retainer already paid by the Client pursuant to clause E 2 b), and any other fees and expenses which have become due.
- g) The Contract may provide for individual and/or additional fee instalments in respect of specific project targets (e.g. candidate presentation/interviewing). Heads! shall be entitled to require the Client to make payments in respect of any such project targets and to issue interim invoices in this respect according to the progress of the project.
- h) If the Client hires more than one of the candidates proposed by Heads! on the basis of or within the scope of a single search assignment, or if a proposed candidate is hired by the Client or a company affiliated with the Client (including any holding company or subsidiary company of the Client, or any other subsidiary company of a common holding company) for a position other than that on which the original search assignment was based (each an Additional Placement), Heads! shall be entitled to an additional fee in respect of each such Additional Placement in accordance with the fee principles set out in clause E 2 c) and d) above.
- i) All fees are subject to applicable Value Added Tax (VAT).

3) EXPENSES

All expenses incurred under and/or in connection with the Contract are charged and invoiced separately, in the amounts set out in the Contract or as otherwise as agreed between the parties in writing, plus any applicable VAT.

Any costs incurred by consultants and candidates for travel outside the UK and/or the EU are not included in the flat rates set out in the Contract and any such expenses and will be charged and invoiced by Heads! separately.

Heads! will be entitled to payment of all expenses incurred under and/or in connection with the Contract, regardless of whether or not the position offered by the Client is filled as a result of the activities undertaken by Heads!.

4) PAYMENT OF FEES AND EXPENSES

All invoices from Heads! are due for payment within 10 days from the date of the invoice. Any fees and/or expenses which have not been invoiced in whole or in part at the time of completion of the search assignment under the Contract, shall become due for payment immediately on completion, termination or expiry of the Contract.

5) RIGHT TO SUSPEND CONTRACT

If during the continuance of the Contract any invoices issued by Heads! are not paid within the period of 10 days from the invoice date, Heads! will be entitled to suspend the Contract until receipt of full payment of the invoices. Heads! will resume the services under the Contract only after receipt of full payment of its invoices with the proviso that the duration of the Contract (and any time periods for performance of services by Heads! under the Contract) shall be deemed extended accordingly.

F) TERMINATION, VARIATION

- 1) Either party may terminate the Contract at any time upon giving written notice to the other party. On termination of the Contract by the Client, Heads! shall be entitled to invoice the Client for services rendered up to and including the date of receipt of the Client's written termination notice plus a pro-rated amount of any outstanding amount of the Retainer under clause E 2 b), plus VAT. In the event of a termination of the Contract by the Client after all fees and expenses have been invoiced, the total sum of all such fees and expenses shall become due immediately in full without any deductions.
- 2) The Client may at any time provide Heads! with a written change request for the Contract. Heads! shall not be obligated to accept such change request. If Heads! does agree with the Client's change request, then any changes to the Contract shall be conditional upon the parties agreeing a revised fee arrangement in writing to take into account the changes to the Contract and any additional costs incurred as a result of those changes. Any variation of the Contract will not become binding unless effected in writing in accordance with clause 10 a).
- 3) The Client may request the suspension of the search assignments under a Contract for a maximum period of up to 90 calendar days by giving written notice to Heads!. During this period, the performance by Heads! of the search assignments under the Contract shall be suspended. Invoicing and other performance deadlines relevant to the Contract shall also be deemed suspended and shall not resume until the end of the above period. Any invoices issued by Heads! for services rendered prior to the suspension shall not be affected by such suspension and shall become due and payable on the dates set out in such invoices and otherwise in accordance with the payment terms set out in clause E 4).
- 4) If the search assignment is suspended by the Client under clause F 3) after all fees and expenses have been invoiced by Heads!, the invoiced amounts shall remain due and payable on the dates set out in such invoices and otherwise in accordance with the payment terms set out in clause E).

G) WITHDRAWAL OF A CANDIDATE

- 1) If a candidate proposed by Heads! terminates the engagement with the Client (for which purposes shall mean a complete termination of any contract with the Client) within the first six months following the date such candidate commences their engagement with the Client due to a lack of professional qualifications of the candidate, then provided the Client had made Heads! reasonably aware in writing of the requirements for such qualifications to be held by any candidate, Heads! shall use reasonable endeavours to search for a suitable replacement candidate free of charge. For the additional work undertaken by Heads! in order to find a

replacement candidate, the Client will only be charged for the expenses and travel costs incurred by Heads! for the candidates and consultants. Save as aforesaid, Heads! shall not have any other liability towards the Client in this regard.

- 2) If a candidate's engagement terminates for any other reason (including for any breach of contract), Heads! shall not be obliged to find a replacement and there will be no reduction in any fee due to Heads!.

H) LIMITATION OF LIABILITY

- 1) Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 2) Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to, liability for:
 - a) death or personal injury caused by negligence; and
 - b) fraud or fraudulent misrepresentation.
- 3) Subject to clause H 2) (liabilities which cannot legally be limited), Heads!'s total liability to the Client for all loss or damage arising out of or in connection with the Contract shall not exceed an amount equivalent to the fees paid to Heads! under the Contract.
- 4) Subject to clause H 1) (no limitation of Client's payment obligations) and clause clause H 2) (liabilities which cannot legally be limited), this clause H 4) sets out the types of loss that are wholly excluded:
 - a) loss of profits.
 - b) loss of sales or business.
 - c) loss of agreements or contracts.
 - d) loss of anticipated savings.
 - e) loss of use or corruption of software, data or information.
 - f) loss of or damage to goodwill; and
 - g) indirect or consequential loss
- 5) Subject to clause H 2) (liabilities which cannot be legally limited), Heads! shall not be liable for any loss or damage suffered as a result of any act or omission of the Client and/or of any of the candidates proposed by Heads! under the Contract.
- 6) Unless the Client notifies Heads! in writing that it intends to make a claim in respect of an event within the notice period (as hereafter defined), Heads! shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the Client having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

I) OFF-SETTING, RETENTION

- 1) All amounts due from the Client to Heads! under this agreement will be paid in full without any deduction or withholding other than as required by law and the Client will not be entitled to assert any credit set-off or counterclaim against Heads! in order to justify withholding payment of any such amount in whole or in part.
- 2) Heads! will be entitled to set off any liability of the Client to Heads! against any liability of Heads! to the Client, in either case whether the liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by Heads! of its rights under this clause J) will be without prejudice to any other rights or remedies available to Heads! under these Terms.

J) FINAL PROVISIONS

- 1) Any variation of these Terms or the Contract will only be valid if it is in writing and signed by both parties.
- 2) Nothing in the Contract creates a partnership or establishes a relationship of principal and agent or any other fiduciary relationship between the parties.
- 3) Except where expressly permitted under the Contract, neither party may assign, subcontract or otherwise transfer all or any part of its rights or benefits under the Contract without the prior written consent of the other party.
- 4) Neither party is to be liable to the other for failure to perform any obligation under the Contract to the extent that the failure is caused by any factor beyond the reasonable control of the parties.
- 5) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 6) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Contract. Any notice shall be deemed to have been received:
 - a) if delivered by hand, at the time the notice is left at the proper address;
 - b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - c) if sent by fax or email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
 - d) In these Terms Business Day shall mean a day other than a Saturday, Sunday or bank holiday in England and business hours means 9.00am to 5.00pm Monday to Friday on a Business Day in the place of receipt.
- 7) The Contract shall be governed by and interpreted with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.