

## **TERMS AND CONDITIONS OF BUSINESS OF BABUSHKA CHILDCARE**

**These Terms and Conditions of business are a legally binding contract between Babushka Childcare (the Agency) and an employer (the Client) and are deemed to be accepted by the Client by virtue of the use or engagement of a person (the Candidate) introduced to the client by Babushka Childcare.**

### **1 DEFINITIONS**

The following expressions shall have the following meanings:

- 1.1 "Agency" means Babushka Childcare Ltd., 12 Melcombe Place, Marylebone, London, NW1 6JJ;
- 1.2 "Client" means any person who purchases Services from the Agency;
- 1.3 "Registration Form" means a booking document, on-line application form, quotation or other written instruction describing the agency Services;
- 1.4 "Services" means means the Introduction of a Candidate, specified in the Registration Form by the Agency to the Client in the accordance with this Agreement;
- 1.5 "Terms and Conditions" means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Agency;
- 1.6 "Agreement" means the contract between the Agency and the Client for the provision of the Services incorporating these Terms and Conditions;
- 1.7 "Candidate" means any nanny, mother's help, maternity nurse or other child care professional or domestic staff requested;
- 1.8 Permanent placement means the engagement of any Candidate by a Client either on a part time or full time basis for more than three months.

### **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by the Agency to the Client and shall supersede any other documentation or communication between parties unless expressly agreed to the contrary by Babushka Childcare in writing.
- 2.2 The Agency is acting as an introductory Agency only and does not directly or indirectly employ staff.
- 2.3 Any variation to these Terms and Conditions must be agreed in writing by the Agency.
- 2.4 These Terms and Conditions shall be attached to any Registration Form and signed and returned to the Agency by the Client.
- 2.5 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Agency may be entitled in relation to the Services, by virtue of any statute, law or regulation.

### **3 REGISTRATION FORM**

- 3.1 The on-line Registration Form is an integral part of these Terms and Conditions. By submitting the Registration Form the Client agrees to these Terms and Conditions.
- 3.2 The Registration Form must be accepted by the Client in its entirety.
- 3.3 The Agreement between the Agency and the Client, incorporating these Terms and Conditions, shall only come into force when the Agency confirms acceptance in writing to the Client.

## **4 SERVICES**

- 4.1 The Services are introduction of Candidate(s) as described in the Registration Form.
- 4.2 Any variation to the Services must be agreed by the Agency in writing.
- 4.3 The Services shall commence on the date of the submission of the Registration Form and continue until terminated according to the terms of this Agreement.
- 4.4 Dates given for the commencement of the Services are estimates only and not guaranteed. Time for commencement shall not be of the essence of the Agreement and the Agency shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the Services.

## **5 FEES AND PAYMENT**

- 5.1 The Agency's standard fee for a permanent placement is as follows:

- 5.1.1 Live-out nanny: 10% of the net annual salary salary excluding VAT.

- 5.1.2 Live-in nanny: 12% of the net annual salary salary excluding VAT.

Annual salary is calculated as a weekly salary multiplied by 52 weeks.

The minimum fee for a candidate placement is £900 excluding VAT. Clients paying the minimum fee are not eligible to any further discounts and promotions.

- 5.2 Fees for temporary positions are negotiated on the ad hoc basis upon receiving a request from the Client.
- 5.3 If the fees paid relate to a temporary placement of a Candidate who then becomes a permanent employee of the Client within 12 months from the date of the initial introduction the Client shall pay the difference between the temporary and permanent placement fees at the time of the change in employment status.
- 5.4 If the part-time position is extended to full-time position in the first year of employment then the Client shall be liable to pay to the Agency the full permanent fee less any fees already paid in respect of the part-time base Engagement.
- 5.5 The Client must settle all payments for Services within seven days from the invoice date and prior to the Candidate commencing employment with the Client. The Candidate will not commence employment prior to the agency fee is to be paid in full. The replacement of a Candidate guarantee only if the Client has paid the appropriate Agency fee and any other charges under this conditions of business.
- 5.6 Any Invoices not paid within 7 days after the invoice due will be subject to an additional penalty charge of 20% of the original invoice amount.
- 5.7 The Agency is also entitled to recover all reasonable expenses incurred in obtaining payment from the Client where any payment due to the Agency is late.
- 5.8 The Client is not entitled to withhold any monies due to the Agency.
- 5.9 The Agency is entitled to vary the fee to take account of:
  - 5.9.1 any additional Services requested by the Client which were not included in the original Registration Form;
  - 5.9.2 any reasonable increase in fee rates, if applicable;
  - 5.9.3 and any variation must be intimated to the Client in writing by the Agency.

## **6 CLIENT OBLIGATIONS**

- 6.1 The Client agrees to cooperate with the Agency as may be required.
- 6.2 The Client shall specify their exact requirements and provide full details of the type of work and period of employment for which the Candidate is required.
- 6.3 The Client shall notify the Agency in written immediately should it choose to engage a Candidate introduced by the Agency.
- 6.4 If the Client or a member of the Client's staff or any acquaintance or associate of the Client, passes on an introduction to any other person or persons within six months of the Candidate's introduction to the Client by the Agency, resulting in the engagement of the Candidate, the Client shall be liable for payment of the full fee in accordance with the fees described in Condition 5.1 for permanent placements for the services described in Condition 4.1 and Registration Form.
- 6.5 The Client is responsible for the employment of the Candidate including the contract of employment.
- 6.6 The Client is responsible for any deductions of tax or National Insurance from the Candidate.
- 6.7 The Client is responsible for obtaining any medical certificates, work permits or other approvals necessary for the Candidate prior the commencement of employment.
- 6.8 The Client should inform immediately the Agency when the Candidate is introduced by the Agency who has already been introduced by a third party. If the Client does not inform the Agency the fee will become payable.

## **7 AGENCY OBLIGATIONS**

- 7.1 The Agency shall supply the Services as specified in the Registration Form.
- 7.2 The Agency shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice and statutory obligations.
- 7.3 The Agency will take all reasonable steps to introduce Candidates who are of sound character, honest and reliable but does not guarantee the suitability of any Candidate introduced or supplied to the Client and accepts no liability for any loss or damage arising from any negligence, misconduct, dishonesty or lack of skill of the Candidate.
- 7.4 The Agency shall obtain references from each Candidate but the Client must satisfy themselves as to the ultimate suitability of a Candidate.

## **8 REFUNDS AND REPLACEMENT**

- 8.1 If a Candidate engaged in permanent employment by the Client does not remain in the Client's employment for four weeks or has their employment terminated by the Client within four weeks of the initial date of employment, the Agency will endeavour to provide two replacement candidates according to the requirements specified in the original Registration Form if the following conditions are met:
  - 8.1.1 The Client notifies the Agency in written within 3 days of the Candidate's termination;
  - 8.1.2 The Client has paid the appropriate placement fee;
  - 8.1.3 The Client has not changed any of the original requirements for the Candidate as specified in the Registration Form;
  - 8.1.4 The Candidate did not resign due to unreasonable demands placed upon them by the Client;
  - 8.1.5 The Clients intention to employ a Candidate remains;

- 8.1.6 The Client has given the Agency a six weeks period to recruit a suitable replacement Candidate to be engaged by the Client for the same requirements as specified in the original Registration Form.
- 8.2 The Agency may choose to provide a full refund of any placement fee excluding an administration fee and temporary charges for the period Child Carer stayed with the Client in case it cannot find any replacement candidate. If the Client does not accept any of the two provided candidates no refund is given. After the first Candidate will be replaced, no refund or replacement will be available to the Clients.
- 8.3 Where a Candidate leaves an employment more than 4 weeks after the date of commencement of the Engagement, but before 12 weeks, the Agency will provide one suitable replacement Candidate to be engaged by the Client for the same requirements as specified in the original Registration Form. No refund will be provided in this case.
- 8.4 If a Candidate leaves employment between 12 weeks and one year the Agency will provide a 35% discount from the applicable fee for finding a new Candidate should the Client wish to continue the search with the Agency. No other discounts are applicable in this case nor this discount is applicable to the minimum fee.
- 8.5 Please note that once the Client advises the agency to look for a replacement Candidate and then finds a new Candidate via another source, the Agency will not offer any refund.
- 8.6 No replacement will be offered, nor refund made, in respect of the engagement terminated by the Candidate as a result of unsatisfactory working or living conditions, change in the job description or conditions materially different from those stated in the Clients registration form or where the Client decide not to further employ a Candidate or substantially change the working or living conditions applicable to the position.
- 8.7 If the Client has not met the conditions as stated in Condition 8.1 of these Terms and Conditions they remain responsible for full payment of the initial placement fee.
- 8.8 All refunds are subject to an administration fee of £150.

## **9. CANCELLATION**

- 9.1 If the Client cancels a confirmed booking less than fourteen days prior to the agreed commencement date the Client shall pay the full Agency fee.

## **10. TERMINATION**

- 10.1 The Agreement shall continue until the Services have been provided or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.
- 10.2 The Agency may terminate the Agreement if the Client has failed to make over any payment due within 2 weeks of the sum being requested.
- 10.3 In the event of termination the Client must make over to the Agency any payment for work done and expenses incurred up to the date of termination.
- 10.4 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

## **11. LIMITATION OF LIABILITY**

- 11.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Agency for death or

personal injury, however the Agency shall not be liable for any direct loss or damage suffered by the Client or any third party howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the sum insured under the professional indemnity insurance policy held by the Agency in the insurance year in which the Clients claim is first notified.

- 11.2 The Agency accepts no liability for any loss, damage, expense or compensation suffered or incurred of any nature by the Client, arising directly or indirectly from an act or omission by any Candidate introduced to the Client by the Agency

## **12 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Registration Form or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## **20 ENTIRE AGREEMENT**

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

## **21 GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

*Amended on 17.03.2011*