



Providing Quality Childcare Advice and Support to suit your family

TERMS AND CONDITIONS OF BUSINESS FOR KIDS DESERVE THE BEST

1. Definitions

“Agency” means Sarah Parkin trading as Kids Deserve the Best, at Suite 213 The Annexe, Design Works, William Street, Felling, Gateshead, Tyne and Wear NE10 0JP

“Candidate” means a person introduced by the Agency to the Client as requested and described in the Instructions for potential employment or engagement in respect of childcare on a temporary basis (including for reasons of maternity) or a permanent basis, whether full or part time.

“Client” means any person, including any family connections of such person, or company who contacts the Agency and provides the Instructions, either orally or in writing on the Family Registration Form, and for whom the Agency has agreed to provide the Services in accordance with these Conditions.

“Conditions” means the terms and conditions of supply of Services as set out herein and any subsequent terms and conditions agreed in writing by the Agency and the Client.

“Confirmation Fee” means a non-refundable fee of £250.00 payable prior to Stage 3 as set out in Clause 3.3.

“Engagement” means the engagement, employment or use of the Candidate by the Client or any third party on a permanent or temporary basis, whether under a contract of service or under a contract of employment.

“Family Registration Form” means the booking form to which these Conditions are attached setting out, amongst other things, the Instructions, including Client’s details and requirements for a nanny or other childcare professional.

“Fees” means the Confirmation Fee, the Interviewing Fee and the Registration Fee, each payable in accordance with Clause 5.

“Instructions” means the instructions provided by a Client, whether orally or in writing, to the Agency to effect Introductions to him / her for the purpose of obtaining childcare on a permanent or temporary basis.

“Interviewing Fee” means a non-refundable fee of £175.00 payable prior to Stage 2 as set out in Clause 3.3.

“Introduction” means the passing by the Agency to the Client of a Curriculum Vitae or any other information in relation to a Candidate.

“Registration Fee” means a non-refundable fee of £100.00 payable upon submission of the Family Registration Form by the Client to the Agency.

“Services” means the services provided by the Agency to the Client as described in these Conditions.

2. Agreement

2.1 The Agreement between the Agency and the Client for the provision of the Services, incorporating these Conditions, shall only come into force when (i) the Agency confirms acceptance of Instructions either orally, in writing to the Client or by conduct through the transmission of information relating to a Candidate to the Client, whether by email, by phone or in person (the **“Agreement”**); and (ii) the payment by the Client of the Registration Fee in accordance with clause 4.2.



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2.2 These Conditions apply to the Agreement to the exclusion of all other terms and conditions and shall supersede any other documentation or communication between the Client and the Agency.

2.3 Any variation of this Agreement (including any special terms and conditions agreed between the parties) must be agreed in writing between the parties.

3. Agency Obligations

3.1 The Agency is not an employer of Candidates but acts as an introduction agent of Candidates to its Clients. The Agency does not provide legal advice with regards the Engagement of the Candidate or any issues that may arise from such Engagement.

3.2 The Agency shall use reasonable endeavours to introduce to the Client Candidates which the Agency considers suitable to be engaged by the Client as required in the Instructions and to perform the additional Services as further set out in this Clause.

3.3 The Agency shall provide its Services in three stages as follows:

Stage 1 - Process of understanding the needs of the Client and sourcing of appropriate CVs.

- *This includes advertising the position on the Agency's website and promoting through various networks.*
- *This includes all the processes involved in registering of all Candidates who wish to be considered.*
- *Ensuring each CV is accurate, nicely presented with a summary paragraph of each applicant.*

Stage 2 - Interviewing Stage

- *This includes arranging of interviews, help with interview preparation and questions.*
- *Feedback after all interviews, arranging of second interviews,*
- *Sourcing of alternative applicants if not happy with first selection*

Stage 3 - Final stages of confirmation of Engagement

- *This includes confirming acceptance with both Client and Candidate.*
- *Written confirmation to both parties, sample contracts and relevant documents*
- *Advice for Candidate in terms of correct insurance, Ofsted registration (if needed) etc.*
- *Advice for Client in terms of payroll, insurance, paperwork, Ofsted registration etc.*
- *After care support with follow up for both parties between 4-6 weeks and 3 months.*

3.4 The Agency shall carry out its obligations with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice and relevant statutory obligations.

3.5 The Agency will take all reasonable steps to introduce Candidates to the Client who are of sound character, honest and reliable but cannot be held responsible for the conduct of a Candidate either before or during the Client's employment or engagement of the Candidate. The Agency accepts no liability for any loss or damage arising from any negligence, misconduct, dishonesty or lack of skill on the part of the Candidate.

3.6 The Agency does not give any warranty as to the accuracy of the information supplied to them by the Candidate and which is then transferred to the Client. The Agency will inform the client within three months of a Candidate being



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employed or engaged of any information which subsequently comes to light that suggest they are unsuitable for the role with the Client.

3.7 The Agency will check that each Candidate it proposes to the Client has had a DBS (previously known as criminal records check) which is valid within the past year and up to date first aid qualifications. Any offer of employment made to a Candidate by the Agency on behalf of the Client is subject to the receipt of suitable references in relation to the Candidate.

3.8 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.

4. Responsibilities of the Client

4.1 The Client shall specify in full within the Family Registration Form their exact requirements and provide full details of the type of work and period of Engagement for which the Candidate is required. The Client acknowledges that the information provided will be shared with prospective Candidates.

4.2 Upon submission of the Family Registration Form, the Client shall pay the Registration Fee in clear funds to the Agency.

4.3 The Client shall notify the Agency as soon as reasonably possible of its wish to make an offer of employment (or of engagement in relation to Candidates acting as maternity nurses) to a Candidate and in the event that Client communicates directly to the Candidate, of the Candidate's acceptance, as applicable, of such offer.

4.4 The Client shall not make any direct communication with any Candidate presented by the Agency until an offer of engagement has been accepted. All communication must be conducted through the Agency.

4.5 The Client shall pay the appropriate relevant Fee as set out in Clause 6 to the Agency in the manner set out in Clause 6.

4.6. The Client is responsible for the employment of the Candidate in accordance with current employment legislation, including the contract of employment and payment of all wages, including tax and national insurance contributions, and expenses and for the procurement of any work permits, visas or medical certificates, if necessary. It is the Client's responsibility to check the Candidate's original documents upon employment and the Agency shall accept no liability for any consequences that may arise as a result of a Client's failure to do so.

4.7 The Client is responsible for ensuring that their home contents insurance includes cover for Employer's and Public Liability insurance for domestic workers, including child carers, failing which the Client shall take out appropriate employer liability insurance to cover the employment of a Candidate.

4.8 The Agency shall obtain a minimum of two references from each Candidate but it is the responsibility of the Client to satisfy himself as to the suitability of any Candidate, to take up any references provided by the Candidate or the Agency and to make appropriate checks of visas, childcare qualifications or driving qualifications.

5. "Pay as you Go" Service

5.1 The Agency provides a childcare introduction service supplying ad hoc or emergency childcare to the Client. The Agency however cannot guarantee the availability of a suitable Candidate, particularly in circumstances where the Client has provided minimal notice of a booking.

5.2 In the event that a Client wishes to use the "Pay as you Go" service, it shall provide as much notice as possible to the Agency of a required booking, being at least five hours in advance of when the childcare is required. Such booking will set



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out the length of time a Candidate is required, the location of the booking and any other relevant information in relation to the service required.

5.3 The Agency shall use all reasonable endeavours to provide the Client with the same Candidate for recurring bookings but cannot guarantee that such Candidate will be available.

5.4 The Client agrees to pay the following fees in relation to the "Pay as you Go" service:

- (i) £14.50 per hour for any daytime bookings between 09.00 and 19.00; and
- (ii) £12.95 per hour for any evening bookings after 19.00.

5.5 Once a booking is complete, the Agency shall send an invoice to the Client with regards completed hours of service (rounded up to the nearest hour) provided by the Candidate. Such invoice is payable by the Client within 5 business days of the invoice.

5.6 Each Candidate that provides its services in relation to the Agency's "Pay as you Go" service is a sub-contractor of the Agency and is therefore not employed by the Agency. Notwithstanding each Candidate is self-employed, any bookings with regards their services must be made through the Agency. Any Client found to be contracted with a Candidate separately will be charged the Confirmation Fee.

6. Agency Pricing Structure

6.1 The Agency operates a 3 stage payment process in accordance with the service stage reached, as set out in Clause 3.3, such that the relevant Fee will be payable depending on the stage the Client has reached in its search for a Candidate. The Agency shall submit an invoice for the relevant Fee to the Client at the beginning of each stage of the process.

6.2 The Client shall pay the relevant Fee as set out in the invoice provided by the Agency by cheque or direct bank transfer 5 business days from the date of the invoice, unless otherwise separately agreed in writing with the Agency.

6.3 The Agency is not VAT registered and therefore the Fees will not have VAT added to them.

6.4 Non-payment of an invoice will result in a suspension of services until the relevant payment is collected.

6.5 If a Client employs a Candidate that has been introduced by the Agency but does not inform the Agency within 7 days, the Confirmation Fee payable will be subject to a 25% surcharge.

6.6 If a Client chooses to engage, re-engage or extend the services of a Candidate, which was initially introduced to the Client by the Agency, in any capacity then the Agency reserves the right to invoice the Client for any fees due and payable in accordance with Clause 6.2 above.

6.6 If any invoice is not paid when due, the Agency is entitled (at its sole discretion) to charge interest on any balance outstanding at the rate of four per cent (4%) above the base rate for the time being of National Westminster Bank PLC compounded quarterly.

6.7 The Client shall be liable for and shall indemnify the Agency against all reasonable costs and expenses incurred by the Agency in respect of any steps, actions or proceedings made or brought against the Client by the Agency to obtain payment of outstanding Fees and interest.



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7. Free Replacement/Refund Policy

7.1 If the Candidate does not commence employment with the Client after accepting an offer of employment or if the Candidate leaves the employment of the Client within eight weeks of commencing such employment or engagement (other than as a result of a breach by the Client of the contract of employment between the Client and the Candidate or a result of the Client's dismissal of the Candidate other than on just and reasonable grounds) then the following provisions shall apply:

7.1.1 These provisions shall only apply if the Client has paid the appropriate Fee and any other charges under this agreement in full.

7.1.2 These provisions shall only apply if the Client has notified the Agency in writing within three working days of the Candidate's failing to take up the employment or leaving the Client's employment or engagement.

7.1.3 The Agency shall make further Introductions to the Client at no further charge for a replacement for the Candidate who has not taken up or who has left the Client's employment within eight weeks.

8. Liability

8.1 The Client shall notify the Agency as soon as reasonably practicable after becoming aware of any matter (a "**Relevant Matter**") in respect of which the Agency may incur any liability to the Client in negligence, for breach of these Conditions or otherwise. Subject as otherwise provided herein, if the Client fails to make such notification within 3 months of becoming so aware, it will not be entitled to make any claim against the Agency in relation thereto (and the Agency shall not incur any liability to the Client in relation to such Relevant Matter). In the event that a Relevant Matter is properly notified as above, and subject as otherwise provided herein, the Agency's liability to the Client in respect of any breach of these Conditions or for negligence or otherwise shall not exceed the amount of the fees payable by the Client to the Agency in connection with the supply and/or introduction of the relevant Candidate.

8.2 Notwithstanding any other provision of these Conditions, nothing herein will restrict or limit the Agency's liability for:

8.2.1 death or personal injury caused by the negligence of the Agency; or

8.2.2 fraud or fraudulent misrepresentation; or

8.2.3 any other matter for which it would be illegal or unlawful for the Agency to exclude or attempt to exclude the Agency's liability.

8.3 The Client shall indemnify the Agency against any claims, losses or liability made against or incurred by the Agency in connection with its proper carrying out of its obligations to the Client under the Agreement whether or not caused, directly or indirectly, by reason of the acts or omissions of the Client provided that, for the avoidance of doubt, the Client will not be liable to so indemnify the Agency if, and to the extent that, the claim, loss or liability arises as a result of the negligence of the Agency or breach of the terms of the Agreement by the Agency.

8.4 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.



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9. Termination

9.1 The Agreement shall continue until the Services have been provided as required in accordance with the Instructions or any subsequent date as mutually agreed in writing by both parties or until terminated at will by either party.

9.2 The Client may terminate the Agreement if the Agency fails to comply with any aspect of these Conditions and this failure continues for a period of 6 weeks after notification of non-compliance is given.

9.3 The Agency may terminate the Agreement if the Client has failed to make over any payment due within 3 weeks of the sum being requested (any such termination being without prejudice to the Agency's claim for payments owed).

9.4 Either party may terminate the Agreement by notice in writing to the other if:

9.4.1 the other party commits a material breach of these Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

9.4.2 the other party commits a material breach of these Conditions which cannot be remedied under any circumstances.

9.5 In the event of termination the Client must reimburse the Agency for any expenses incurred, as notified to the Client by the Agency, up to the date of termination and shall not be entitled to any refund of the Fee already paid and any Fee due at the date of termination and interest thereon and all other sums due to the Agency will immediately become payable in full.

9.6 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.

10. Confidentiality

10.1 All information provided by either party to the other, including but not limited to any personal details relating to the Candidate or the Client, will be treated as strictly confidential and will not be disclosed by either party to any third parties, unless required by law or regulation, without prior written consent of the other or of the Candidate, as the case may be.

10.2 The passing on by the Client of any information to a third party which results in that third party employing a Candidate shall render the Client liable for payment to the Agency of the relevant Fee under terms of this Agreement as if the Client had employed the Candidate rather than the third party.

10.3 To the extent that any data or information belonging to the Client is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory:

(a) the Agency will process such data and information only in accordance with the Client's instructions;

(b) the Agency will not transmit such data and information to a country or territory outside the European Economic Area without the Client's prior express written consent; and



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(c) the Agency will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Client as data controller.

11. General

11.1 Neither party may assign transfer or in any way make over any of its rights or obligations to any third party without the written consent of the other party.

11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing either by letter or email addressed to the other party at its registered office or principal place of business or such address as any at the relevant time has been previously notified to the party giving the notice.

11.3 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.5 It is not intended that any of the terms of this agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to this Agreement.

11.6 English law shall apply to this agreement and the parties agree to submit to the jurisdiction of the English courts.