



# Wisewalk Resources Limited

Acting as an employment agency for the supply of candidates for permanent recruitment

## Terms & Conditions of Business

Effective: 1<sup>st</sup> January 2009

### 1 Interpretation

In these terms of business:

1.1 the following words and expressions shall have the following meanings:

**'Candidate'** means a person introduced by the Company to the Client to be considered for an Engagement;

**'Client'** means any person, firm or corporation who approaches the Company with a view to engaging or otherwise employing a Candidate or to whom a Candidate is introduced by the Company;

**'Company'** means Wisewalk Resources Limited [or any of its subsidiary, associated or holding companies];

**'Engagement'** means the employment, hire or other use, directly or indirectly and whether under a contract of service or contract for services or under an agency, licence, franchise or partnership agreement or otherwise, and on a permanent, temporary or other basis, of a Candidate by or on behalf of the Client;

**'month'** means a calendar month;

**'Terms'** means these terms of business;

**'week'** means 7 consecutive days;

1.2 words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa;

1.3 references to numbered clauses are to clauses so numbered in these Terms;

1.4 any reference to any statute (or any section or part thereof) includes any enactment replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced;

1.5 the headings are for convenience only and shall not affect the construction of anything in these Terms.

### 2 Basis of agreement

2.1 All and any business undertaken by the Company is transacted subject to these Terms, all of which shall be incorporated in any agreement between the Company and the Client. In the event of any conflict between these Terms and any other terms and conditions, these Terms shall prevail unless expressly otherwise agreed in writing by a director of the Company. No variation in these Terms shall be valid if made without the written consent of a director of the Company.

2.2 The interviewing by or on behalf of the Client or the Engagement of a Candidate or the commencement by a Candidate of work for or the provision of services to the Client (whichever first occurs) shall be deemed acceptance of and agreement to these Terms.

2.3 The complete or partial invalidity or unenforceability of any provision in these Terms for any purpose shall in no way affect the validity or enforceability of such a provision for any other purpose or the remaining provisions. Any such provisions shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.

2.4 These Terms supersede all previous terms of business of the Company.

### 3 Obligations of the Company

The Company will use its reasonable endeavours to introduce to the Client a suitable Candidate to carry out work for the Client of such nature as the Client shall notify to the Company

when advising the Company of the vacancy in respect of which the Candidate has been introduced. The Client accepts that no warranty as to the suitability of the Candidate can be given by the Company. The Company cannot guarantee to find a suitable Candidate for each vacancy.

### 4 Obligations of the Client

4.1 The Client will notify the Company immediately an offer of employment is accepted by a Candidate or otherwise upon the commencement of an Engagement (whichever first occurs).

4.2 The Client shall satisfy itself as to the suitability of any Candidate for the purposes of the vacancy for which the Candidate has been introduced. Without prejudice to the generality of the foregoing, it is acknowledged by the Client that it is for the Client to take up references, to check the validity of qualifications and to ensure that the Candidate is capable of operating any equipment and/or machinery to the necessary level. The Client shall be responsible for obtaining any work and other permits and for ensuring that the Candidate satisfies any medical requirements or other qualifications that may be appropriate or required by law.

4.3 The Client undertakes not to employ or seek to employ members of the staff of the Company, but if any such member of staff accepts an Engagement within 3 months of such member of staff leaving the employment of the Company, then the Client shall be liable to pay the Company's scale of fees for staff as if such member of staff had been introduced by the Company.

4.4 The Client undertakes that in the event of the Client introducing (directly or indirectly) any Candidate to another person, firm or corporation, including (without limitation) any subsidiary, associated or holding company of the Client, resulting in an Engagement by that person, firm or corporation (which the Client shall immediately notify to the Company) the Client shall pay to the Company an introduction fee in accordance with clause 5 of these Terms.

4.5 The Client consents to the disclosure by the Company to Candidates of information relating to the Client.

### 5 Fees

5.1 The introduction fee shall become due immediately once an Applicant signs a contract of employment or in some other manner formally accepts the offer of Engagement. At this point the Company will render an invoice to the Client for its fees. The fee shall be calculated in accordance with Table A. VAT shall be payable thereon at the prevailing rate where applicable.

Table A

Annual salary	Fee (% of annual salary)
Up to £14,999	12.5%
£15,000 - £17,999	15%
£18,000 - £20,999	17.5%
£21,000 - £24,999	20%
£25,000 and above	25%

5.2 The introduction fee payable pursuant to clause 5.1 shall be calculated as a percentage of the Candidate's annual salary at the date of the commencement of the Engagement, to include a notional figure for benefits, bonuses, inducements, allowances and other taxable (and, where applicable, non-



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taxable) emoluments which form part of the Candidate's total remuneration package in accordance with the Company's standard rates for evaluating such benefits from time to time.

5.3 Charges for advertising must be separately agreed in writing before the advertisement is placed and will be payable irrespective of whether a Candidate is engaged. All other charges must be separately agreed in writing and will be payable irrespective of whether or not a Candidate is engaged.

5.4 All moneys due under these Terms shall be paid by the Client within 7 days of the date of invoice by the Company.

5.5 The Company reserves the right to charge the Client interest in respect of any amount outstanding after expiry of the credit period set out in clause 5.4 (both before and after any judgment) from the date of invoice up to and including the day of payment at the statutory interest rate from time to time in force for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

### 6 Termination

6.1 In the event of a Candidate terminating an Engagement within 12 weeks of the date upon which such Candidate commenced work for the Client and provided that:

- (a) all moneys due under these Terms have been paid by the Client in accordance with clause 5 of these Terms; and
- (b) the Client serves notice on the Company in writing of the termination of the Engagement within 7 days of such termination; and
- (c) neither the Client nor any subsidiary, associated or holding company of the Client shall commence Engagement of the Candidate within 6 months from the date of the termination of the Engagement;

then, subject to the other provisions of this clause 6, the Client shall receive a rebate calculated in accordance with Table B. Under no circumstances will any expenses be refunded.

Table B

Week in which Candidate terminates Engagement	Rebate (% of introduction fee)
1 - 4	50%
5 - 8	25%
9 - 12	10%

6.2 No rebate shall be payable by the Company in the event of failure by the Client to adhere to the time limits provided for in clause 6.1.

6.4 If the Client subsequently re-engages the Candidate in any capacity, the rebate shall be repayable by the Client to the Company in full.

### 7 Liability and indemnity

7.1 Neither the Company nor any of its staff shall be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with an Engagement and, in particular, but without limitation to the foregoing, any such loss, injury, damage, expense or delay arising from or in any way connected with:

- (a) failure of the Candidate to meet the requirements of the Client for all or any of the purposes for which he is required by the Client (subject to clause 6 of these Terms);

(b) any act or omission of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;

(c) any loss, injury, damage, expense or delay incurred or suffered by a Candidate; provided that nothing in this clause 7 shall be construed as purporting to exclude or restrict liability of the Company to the Client for personal injury or death resulting from the Company's proven negligence (as defined in the Unfair Contract Terms Act 1977) nor any statutory liability or any exclusion or limitation which is prohibited by law.

7.2 In consideration of the Company entering into an agreement with the Client into which these Terms are incorporated, the Client hereby undertakes to indemnify the Company in respect of any and all liability of the Company for:

- (a) any loss, injury, expense or delay suffered or incurred by a Candidate, howsoever caused; and
- (b) any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; provided that this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly or indirectly out of or in any way connected with an Engagement.

7.3 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Company set out in these Terms are reasonable and reflected in the fee payable to the Company under these Terms and shall accept risk and insure accordingly.

### 8 Miscellaneous

8.1 The Company reserves the right to review and to revise these Terms without prior notice.

8.2 These Terms shall be governed by and construed in accordance with the laws of England and Wales and any dispute between the Client and the Company arising out of the contract into which these Terms are incorporated shall be subject to the exclusive jurisdiction of the courts of England and Wales.

### Acceptance of Terms & Conditions

I/We agree to the introduction by the Company to me/us of Candidates on these Terms

Signed.....  
Client/Director or authorised signatory

Print name.....

For and on behalf of.....  
(Client name)

Date.....

**1 DEFINITIONS**

1.1 In these Terms of Business the following definitions apply:

“**Assignment**” means the period during which the Temporary Worker is supplied by the Employment Business to render services to the Client;

“**Client**” means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to whom the Temporary Worker is supplied or introduced;

“**The Employment Business**” means Wisewalk Resources Limited of 6 Ox Row, Market Square, Salisbury, Wiltshire, SP1 1EU;

“**Engages/Engaged/Engagement**” means the engagement, employment or use of the Temporary Worker directly by the Client or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Temporary Worker is an officer or employee

“**Temporary Worker**” means the individual who is introduced by the Employment Business to render services to the Client.

“**Transfer Fee**” means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

“**Introduction Fee**” means the fee payable in accordance with clause 7.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

“**Introduction**” means (i) the Client’s interview of a Temporary Worker in person or by telephone, following the Client’s instruction to the Employment Business to supply a Temporary Worker; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Temporary Worker; and which leads to an Engagement of that Temporary Worker.

“**Remuneration**” includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Worker for services rendered to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of [specify] will be added to the salary in order to calculate the Employment Business’ fee.

1.2 Unless the context otherwise requires, references to the singular include the plural.

1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.

**2 THE CONTRACT**

2.1 These Terms constitute the contract between the Employment Business and the Client for the supply of the Temporary Worker’s services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Temporary Worker or the passing of any information about the Temporary Worker to any third party following an Introduction.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

**3 CHARGES**

3.1 The Client agrees to pay such hourly charges of the Employment Business as shall be notified to and agreed with the Client. The hourly charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour) and comprise mainly the Temporary Worker’s hourly rate but also include the Employment Business’ commission calculated as a percentage of the Temporary Worker’s hourly rate, employer’s National Insurance contributions and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges.

3.2 The charges are invoiced to the Client on a weekly basis and are payable within 30 days. The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.3 There are no rebates payable in respect of the charges of the Employment Business.

**4 INFORMATION TO BE PROVIDED**

When making an Introduction of a Temporary Worker to the Client the Employment Business shall inform the Client of the identity of the Temporary Worker; that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Temporary Worker will be employed by the Employment

Business under a contract of service or apprenticeship or a contract for services; and that the Temporary Worker is willing to work in the Assignment.

Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following, save where the Temporary Worker is being Introduced for an Assignment in the same position as one in which the Temporary Worker had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

**5 TIMESHEETS**

5.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Client shall sign the Employment Business’ time sheet verifying the number of hours worked by the Temporary Worker during that week.

5.2 Signature of the time sheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client’s obligation to pay the charges in respect of the hours worked.

5.3 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Client should apply the provisions of clause 10.1 below.

**6 PAYMENT OF THE TEMPORARY WORKER**

6.1 The Employment Business assumes responsibility for paying the Temporary Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

**7 TRANSFER AND INTRODUCTION FEES**

7.1 Transfer Fees where a worker has been supplied

In the event of the Engagement by the Client of a Temporary Worker supplied by the Employment Business for an Assignment either (1) directly or (2) pursuant to being supplied by another employment business, during the Assignment or within whichever is the longer of either

- a) 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the ‘first Assignment’ for these purposes); or
- b) 8 weeks from the day after the last day the Temporary Worker worked on the Assignment the Client shall be liable, subject to electing by giving 7 days prior notice, to either:
  - i) An extended period of hire of the Temporary Worker being 40 weeks during which the Client shall pay the current hourly charge agreed pursuant to clause 3.1 for each hour the Temporary Worker is so employed or supplied; or
  - ii) A Transfer Fee calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

However, where the client does not give such notice before the Temporary Worker is Engaged the parties agree that the Transfer Fee shall be due.

7.2 Introduction Fees where a worker is introduced but not supplied

In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Employment Business to the Client, but which leads to an Engagement of the Temporary Worker by the Client either directly or pursuant to being supplied by another employment business within 6 months from the date of Introduction the Client shall be liable, subject to electing upon giving 7 days notice, to either:

- a) A period of hire of the Temporary Worker being 40 weeks during which the Client shall pay the hourly charges agreed pursuant to clause 3.1 above for each hour the Temporary Worker is so employed or supplied; or
- b) An Introduction Fee calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

However, where the client does not give such notice before the Temporary Worker is Engaged the parties agree that the Transfer Fee shall be due.

7.3 In the event that the Engagement of the Temporary Worker is for a fixed term of less than 12 months, the fee in clause 7.1.1(b) or 7.2.1(b), calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Temporary Worker within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement

following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.

**7.4 Inability to supply during the period of hire**

7.4.1 If the Client elects for a period of hire, as set out in clauses 7.1.1 (a) or 7.2.1 (a), but before the end of such period Engages the Temporary Worker supplied by the Employment Business either directly or pursuant to being supplied by another employment business or the Temporary Worker chooses not to be supplied for the period of hire, the Transfer or Introduction Fee calculated in accordance with either 7.1(b) or 7.2(b) may be charged, reduced by such percentage to reflect any period of hire already undertaken by the Temporary Worker and paid for by the Client.

7.4.2 Where period(s) of absence due to illness or injury prevent the Temporary Worker from being employed or supplied for 4 or more days, which shall be qualifying days for the purposes of Statutory Sick Pay (SSP), during the period of hire as set out above, the period of hire shall be extended by a period equivalent to the total period of absence. Where the Employment Business pays the Temporary Worker SSP during the period of hire an equivalent amount shall be charged to and be payable by the Client in addition to the charges agreed pursuant to clause 3.1.

**7.5 Transfer Fees where there has been an Introduction to and Engagement by a Third Party**

In the event that a Temporary Worker supplied to a Client is introduced by the Client to a third party which results in the Engagement of the Temporary Worker by the third party during the Assignment or within whichever is the longer of either:

- a) 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
- b) 8 weeks from the day after the last day the Temporary Worker worked on the Assignment

The Client shall be liable to pay a Transfer Fee calculated in accordance with clause 7.1.1 (b).

**7.6 Introduction Fees where there has been an Introduction but no Supply resulting in an Engagement by a Third Party**

In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Employment Business to the Client, but the Temporary Worker is introduced by the Client to a third party which results in the Engagement of the Temporary Worker by the third party within [6 months] from the date of Introduction the Client shall be liable, to an Introduction Fee calculated in accordance with clause 7.2.1 (b)

**8 LIABILITY**

8.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.

8.2 Temporary Workers supplied by the Employment Business are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though the Temporary Worker was on the payroll of the Client. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 6 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.

8.3 The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.

8.4 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker for the Temporary Worker to fill the Assignment.

8.5 The Client undertakes not to request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.

8.6 The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with clauses 8.2, 8.3 and 8.5 and/or as a result of any breach of these Terms by the Client.

**9 SPECIAL SITUATIONS**

9.1 Where the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client:

- i) Copies of any relevant qualifications or authorisations of the Temporary Worker, and
- ii) Two references from persons not related to the Temporary Worker who have agreed that the references they provide may be disclosed to the Client

and has taken all reasonably practicable steps to confirm that the Temporary Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

**10 TERMINATION**

10.1 The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates: -

- a) Within four hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours; or
- b) Within two hours for bookings of seven hours or less;

and also provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

10.2 Any of the Client, the Employment Business or the Temporary Worker may terminate an Assignment at any time without prior notice and without liability.

10.3 The Client shall notify the Employment Business immediately and without delay and in any event within [24] hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.

10.4 The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith by notice in writing without prior notice and without liability.

**11 LAW**

11.1 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

Acceptance of Terms & Conditions

I/We agree to the introduction by the Company to me/us of Candidates on these Terms

Signed.....  
Client/Director or authorised signatory

Print name.....

For and on behalf of.....  
(Client name)

Date.....