

# TERMS AND CONDITIONS OF BUSINESS

1. These terms and conditions ("Terms") have effect between Dan Wake trading as Ellis-Wake ("Ellis-Wake") and the Client (as defined below). Ellis-Wake operates as a recruitment agency.
  2. In these terms and conditions the following words and expressions shall have the following meanings:

"Applicant" means any individual or individuals introduced by Ellis-Wake to a Client with a view to Engagement with that Client.

"Client" means any person, firm or company (and includes the interviewer) to whom or to which Ellis-Wake introduces an Applicant with a view to Engagement and by whom or which an Engagement of such an Applicant is made.

"Details of an Applicant" means the supply by Ellis-Wake orally or in writing, to the Client of any information about an Applicant, even though Ellis-Wake may not supply the name of the Applicant, and includes (without limitation) the supply of the Applicant's date of birth, gender, geographical area of residence and, in the case of a solicitor, date of admission.

"Introduction" means the Client's interview of an Applicant in person or by telephone or the passing to the Client of a CV or other information which identifies the Applicant and which leads to the Engagement of that Applicant by the Client.

"Engagement" means the employment or use of the Applicant by the Client on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement; or any other engagement.

"The Applicant's Remuneration" means the applicant's total gross remuneration for the first year following the date of his Engagement, paid or agreed to be paid to the Applicant and includes the amount or value for that year of any or all agreed basic salary, salary reviews, pension contributions, housing allowances, relocation or other allowances, once and for all payments, reasonably probable value of all commission or bonuses or any other emoluments or benefit in kind which depend on a future event or events and any other emoluments of employment or benefit in kind.

(Where a company car is provided a notional annual value of £5,000 for cars below two litres capacity and £7,000 for cars of two litres and above will be applied with this figure being added to the gross remuneration to calculate Ellis-Wake's fee)

"Associated Employer" has the meaning given by Section 231 of the Employment Rights Act 1996.

Unless the context requires otherwise, a reference to the masculine includes the feminine and the singular includes the plural (and vice versa).

Ellis-Wake shall make Introductions on the terms and conditions contained in these Terms.
  3. The interviewing of an Applicant constitutes acceptance of these Terms and an agreement by the Client to pay Ellis-Wake's fee should an Engagement in any capacity occur, regardless of whether Ellis-Wake is the effective cause of that Engagement. The interviewer warrants that he is duly authorised to agree these Terms on behalf of his firm, principal or employer, as the case may be.
  4. No fees are charged unless an Applicant introduced by Ellis-Wake is engaged.
  5. These Terms constitute the whole agreement between the parties and supersede all previous agreements between the parties relating to its subject matter. Each party acknowledges that it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance, or warranty (whether made negligently or innocently) but nothing in this clause shall limit or exclude any liability for fraud. No variation of these Terms shall be effective unless confirmed in writing and signed by a director of Ellis-Wake.
  6. The Client agrees with Ellis-Wake:
    - a) to notify Ellis-Wake immediately upon the Engagement of an Applicant introduced by Ellis-Wake and, if so requested, supply Ellis-Wake with a copy of the contractual documents.
    - b) to pay Ellis-Wake's invoice within 14 days of its date (the invoice will normally be raised on the day that the Applicant commences Engagement, or shortly thereafter).

Without prejudice to any other right or remedy that it may have, if the Client fails to pay Ellis-Wake within 14 days of the date of the invoice, Ellis-Wake may charge interest on such a sum from the due date until the date of actual payment at the annual rate of 4% over the base lending rate of Barclays Bank plc from time to time, compounded monthly until payment is made, whether before or after any judgement and the Client shall pay the interest immediately on demand. Ellis-Wake may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
  7. In the event of an Engagement of an Applicant introduced by Ellis-Wake, Ellis-Wake's fee is:
    - 22.5% of the Applicant's Remuneration if the Applicant's Remuneration is less than £40,000
    - 25% of the Applicant's Remuneration if the Applicant's Remuneration is £40,000 or over

If a Client takes an Applicant introduced by Ellis-Wake into equity partnership (instead of entering into a contract of service or a contract for services), Ellis-Wake's fee is 25% of the Applicant's profit share or £20,000, whichever is greater. For the purposes of this clause the Applicant's profit share means the reasonably probable gross annual share of profits due to the Applicant for the first year from the date of his entering into the partnership.

If any form of association or amalgamation between a Client and an Applicant introduced by Ellis-Wake, other than a contract of service, a contract for services or partnership, results from the Introduction, a reasonable fee will become due on the date from which the association or amalgamation commences, to be agreed between the Client and Ellis-Wake, save that a minimum fee of £20,000 shall be due and payable.

Time for payment shall be of the essence of the contract.

Any and all fees referred to in this clause 7 are exclusive of VAT which Ellis-Wake shall add to its invoices at the appropriate rate.
  8. In the event that through an introduction made by Ellis-Wake, a team of people is engaged by the Client, the Client shall be responsible for Ellis-Wake's fees calculated in respect of each member of that team on the basis set out in clause 7 above. If an Applicant introduced by Ellis-Wake to a Client ("the Original Applicant") introduces one or more Applicants to that Client, and the Client engages one or more of such Applicants in any capacity during the period of 24 months from the date of Ellis-Wake's introduction of the Original Applicant, Ellis-Wake shall be treated as having introduced that or those Applicants through the agency of the Original Applicant to the Client and will be entitled to fees as calculated in accordance with clause 7 above.
  9. The Client agrees with Ellis-Wake:
    - a) that an Introduction shall be deemed to have been effected where Ellis-Wake sends or provides information relating to the Applicant whether orally or in writing, sufficient to identify the Applicant, and fees will be charged by Ellis-Wake in respect of any resulting Engagement made within the 24 months after the Introduction, however effected.
    - b) where an Applicant was previously known to the Client, an Introduction shall be deemed to have been made exclusively by Ellis-Wake and any Engagement of that Applicant shall be deemed to have been solely by reason of that Introduction unless within 72 hours of delivery to the Client (whether orally or in writing) of information sufficient to identify the Applicant or the first interview of the Applicant by the Client if later, the Client shall have notified Ellis-Wake that it was already in contact with that Applicant.
  10. Clients are requested to keep Introductions confidential. If the Client, or any constituent partner member, partner, employee or agent of the Client passes on details of an Applicant to any person other than the Client, which results in a contract of service, a contract for services or partnership, or any other form of association or amalgamation, between that other person and the Applicant, the Client to whom the Introduction was first made will be liable to Ellis-Wake as if the Client were that other and that other had contracted with Ellis-Wake on these Terms, save that a minimum fee of £5,000 shall be due and payable, unless that other accepts liability under these Terms.
  11. Ellis-Wake processes the data of its Applicants in accordance with the Data Protection Act 1998. In submitting any data relating to the Applicant to the Client, the Client is expected to treat this information with an equal level of privacy and protection and will assume liability for any breach of the Data Protection Act 1998.
  12. Any cancellation or reduction of Ellis-Wake's fee under the terms of this Clause is conditional on Ellis-Wake being notified in writing of the date of the Applicant's departure within one week of such date and Ellis-Wake's original invoice having been paid within the 14 day period referred to in Clause 6. Cancellation or reduction of the fee shall not apply where the Applicant is dismissed by reason of redundancy or unlawful discrimination, change in job description or any other alteration to the terms originally offered by the Client to the Applicant.
- Subject to the above, a refund will be due in the following circumstances and the Client shall be entitled to a refund in accordance with the following schedule:
- If the Applicant terminates his Engagement within the first 4 weeks – 75% reimbursement of fee
  - If the Applicant terminates his Engagement within the first 8 weeks – 50% reimbursement of fee
  - If the Applicant terminates his Engagement within the first 12 weeks – 25% reimbursement of fee
13. Every effort is made to maintain a high standard of integrity and an efficient service, but the selection of an Applicant is the Client's responsibility entirely. Ellis-Wake shall not be liable for any loss or damage however occasioned to anyone arising out of any act or omission by it or its employees or its agents or by any Applicant (provided that there is nothing in this agreement intended to limit or exclude Ellis-Wake's liability for death or personal injury occurring as a result of Ellis-Wake's negligence or that of its servants or agents or any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Ellis-Wake). It is the Client's responsibility to satisfy itself as to the accuracy of any statement made by the Applicant. In particular (but without limitation) the Client is, and Ellis-Wake is not, responsible for taking up references, checking the validity of practising and other Certificates, and that there are no Law Society employment restrictions on the Applicant, investigating work histories, investigating medical histories, arranging medical examinations, obtaining work permits and visas and taking all other steps a reasonable prospective employer would take in like circumstances to secure the Engagement of an Applicant, or the suitability of the Applicant. Because Ellis-Wake places staff over a large geographical area it does not necessarily interview Applicants personally unless specifically instructed to do so by the Client.
  14. Where the parties disagree as to the amount of any fee payable under the Terms, the disagreement shall be determined by a single arbitrator in accordance with the provisions of the Arbitration Act 1996 as amended or re-enacted, such an arbitrator to be nominated in default of agreement by the President for the time being of the Law Society of England & Wales.
  15. Where an offer of employment has been made in writing to an Applicant, and is subsequently withdrawn after acceptance by the Applicant through no fault of the Applicant, the Client shall within 7 days of such withdrawal, write to Ellis-Wake giving reasonable particulars of the reason for the withdrawal and shall be liable to pay an administration charge of £2,500 plus VAT for such withdrawal
  16. These terms and conditions shall be governed and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts.