



Terms and Conditions of Business

1. Definitions

"Agency" means Claire O'Connell & Jane Shabani trading as Pumpkins Nanny Agency.

"Agency Fee" means the relevant fee payable to the Agency for the Services as set out in Clause 5.

"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 the person or company who contacts the Agency and provides the Instructions 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.

"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.

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

"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 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**").

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.



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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. Supply of Services

3.1 The Agency is not an employer of Candidates but acts as an introduction agent of Candidates to its Clients.

3.2 The Agency shall use reasonable endeavours to introduce to the Client Candidates which the Agency considers suitable to be employed 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 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.

3.4 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.

3.5 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 as soon as possible within three months of a Candidate being employed or engaged of any information which subsequently comes to light that suggest they are unsuitable for the role with the Client.

3.6 The Agency will check that each Candidate it proposes to the Client has had a Criminal Records Bureau check ("**DBS check**") which is valid within the past three years. In the event that a Client wishes to have an up to date DBS check on the Candidate or the Candidate does not have a valid DBS check, necessary for the Candidate prior to the commencement of the Candidate's employment by the Client, the Client shall pay for the Agency to carry out a DBS check on its behalf.

3.6 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.

3.7 The Client agrees that the Agency may share data supplied to the Agency by the Client with suitable Candidates for the purpose of the Services. This data includes, but is not limited to, names of family members, home address and contact number.



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4. Responsibilities of the Client

4.1 The Client shall specify in full within their Instructions their exact requirements and provide full details of the type of work and period of employment for which the Candidate is required.

4.2 The Client shall notify the Agency in writing as soon as reasonably possible but in any event within one week of both the making of the offer of employment, or engagement in relation to self-employed Candidates or Candidate acting as maternity nurses, to a Candidate and of the Candidate's acceptance, as applicable, of such offer.

4.3 The Client shall pay the appropriate Agency Fee as set out in Clause 5 to the Agency.

4.4 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 and expenses and for the procurement of any work permits or medical certificates, if necessary.

4.5 The Client is responsible for ensuring that their home contents insurance includes cover for Employers 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.

4.6 The Agency shall check a minimum of two forms of identification and 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 childcare qualifications, driving qualifications and identification.

5. Charges

5.1 The amount of the Agency Fee will be determined by reference to the type of employment or engagement as follows:

5.1.1 A permanent position is any position of over three months' duration.

Permanent Candidates:	
Hertfordshire	2.5 x gross weekly salary
London	4 x gross weekly salary
Temporary Candidates:	
Less than one week (4 days or less)	£25 per day
Up to 12 week placements	£100 for first week, £50 per week thereafter



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12 week plus placements:
Hertfordshire
London

2.5 x gross weekly salary
4 x gross weekly salary

Night Nannies:

£35 per night for the first 7 nights, £25 per night thereafter

Maternity Nurses:

£50 per session for the first 7 days, £25 per session thereafter

5.2 Where a temporary position subsequently becomes a permanent position, the Client shall be required to pay the relevant Agency Fee for the permanent position minus the Agency Fee originally paid for the temporary position.

5.3 Following notification by the Client of a Candidate's acceptance of employment as required by Clause 4.2, the Agency shall send an invoice to the Client setting out the relevant Agency Fee. The Agency Fee is payable by the Client within fourteen working days from the date of Agency's invoice notwithstanding cancellation by the Client but subject to the provisions of Clause 5.4.

5.4 If the Client withdraws the offer of employment or engagement referred to in clause 5.3 for any reason prior to the commencement of such employment or engagement then:

(i) in the event that the full amount of the Agency Fee has been received by the Agency from the Client in accordance with clause 5.3 the Agency shall refund to the Client 50% of the amount of the Agency Fee actually received by the Agency; or

(ii) in the event that the Agency has not, at the time of receipt by the Agency of notification of the withdrawal, received from the Client the full amount of the Agency Fee, the Client will still, for the avoidance of doubt, be obliged to pay to the Agency (within the 14 day period referred to in clause 5.3 above) 50% of the Agency Fee and the Client shall not be obliged to pay the remaining 50% of the Agency Fee to the Agency.

For the avoidance of doubt, if a refund is made by the Agency pursuant to this Clause 5.4, no further refund will be made under clause 7 or otherwise.

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



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5.6 If within 6 months of the contracted start date the Candidate's contracted hours should increase, the Agency reserves the right to re-invoice the Client for any additional payable fee due and payable in accordance with Clause 5.1.1 above.

5.7 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.

5.8 If the Client has to delay the commencement of the Candidate's employment (for example because of the birth of a baby later than expected) no refund of the Agency Fee or any part thereof shall be payable.

5.9 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 Agency Fees and interest.

5.10 In the instance that the arrangement is on a temporary basis only, the following will apply-

A cancellation fee of £25 will be applied should a booking be cancelled by the Client with less than 48 hours notice.

A minimum of 1 day of the agreed daily salary will be payable to the Candidate should a booking be cancelled by the Client with less than 48 hours notice.

A replacement candidate or full session refund will be given should the session be cancelled by either the Candidate or the Agency.

6. Additional Fees

6.1 If a Candidate employed by the Client on a temporary or maternity basis is re-employed by the Client within one calendar year of the termination of the original period of employment (whether such re-employment is on a temporary or permanent basis) then a further Agency Fee shall be payable by the Client to the Agency. Such fee shall be equal to the Agency Fee which would have been payable if the Agency had introduced the Candidate to the Client at the time of re-employment.

6.2 If the employment of a Candidate employed on a permanent part time basis is extended to full time employment in the first year of employment then the Client shall be liable to pay to the Agency an additional Agency Fee. Such fee shall be the Agency Fee which would have been payable at the time of the Introduction in respect of full time employment after deduction of the Agency Fee already paid by the Client.

7. Free Replacement/Refund Policy



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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 six 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:

7.1.2 These provisions shall only apply if the Client has paid the appropriate Agency 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 seven 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, or alternatively if unable to offer a suitable replacement within 4 weeks, will offer a refund based on the following:

Candidate leaves within 2 weeks: 100% Refund

Candidate leaves within 4 weeks 50% Refund

Candidate leaves within 6 weeks 20% Refund

7.2 Once one free replacement has been found, there are no further refunds or replacements offered.

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 terms and 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 terms and 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.



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8.2 Notwithstanding any other provision of these terms and 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.

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.



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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 Agency Fee already paid and any Agency 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 an Candidate shall render the Client liable for payment to the Agency of the relevant Agency Fee under terms of this Agreement as if the Client had employed the Candidate rather than the third party.

11. DATA PROCESSING

“Data Protection Legislation” means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

11.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Agency is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

11.2 The Agency shall, in relation to any Personal Data (as defined in the Data Protection Legislation) processed in connection with the performance by the Agency of its obligations under this agreement:



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(a) process that Personal Data only on the written instructions of the Client for the purposes of carrying out a childcare search in accordance with the terms of this agreement unless the Agent is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Agent to process Personal Data (Applicable Laws). Where the Agent is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Agent shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agent from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) assist the Client in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the Client without undue delay on becoming aware of a Personal Data breach;

(f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause.



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11.3 The Client consents to the Agent appointing any third-party processor of Personal Data under this agreement for the purpose of carrying out a childcare search.

12. Consumer rights

12.1 If the Client is contracting as a consumer, the Client may cancel the Agreement by informing the Agency in writing at any time within fourteen calendar days of the date of the Agreement and before the provision of the relevant Service. The Agency will then confirm the Client's cancellation in writing to the Client. This means that the Agency will not usually begin work on the Client's Services until this period has ended. However, the Client may request that the Agency begin the supply of the Services before the end of the cancellation period by confirming the Instructions by e-mail, which shall be evidence of the Client's request that the Agency begin the supply of the Services before the end of the cancellation period. If the Client does this, the Agency will be able to start the provision of the Services immediately. If subsequently the Client informs the Agency within the fourteen-day cancellation period referred to above that the Client wishes (notwithstanding its earlier request) to cancel the Services the Client may do so but the Agency will be entitled to charge for the work done before the Agency was informed of the Client's decision to cancel.

13. General

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.



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