

# Manny & Me

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Terms & Conditions

## TERMS & CONDITIONS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause will apply.

**Business Day:** a day other than a Saturday, Sunday or public holiday when banks in London are open for business.

**Client:** the person specified on the Client Specification as the Client.

**Client Specification:** the specification attached as Appendix 1 which sets out details of the Services and the Client's requirements for a Nanny.

**Commencement Date:** the date on which the parties enter into the Agreement.

**Company:** Manny & Me Ltd (company number: 09598409) of 94 Leonard Court, Cobden Walk, London, SE15 2BP.

**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 Company and the Client.

**Conduct Regulations 2003:** the Conduct of Employment Agencies and Employment Business Regulations 2003.

**Consumer Contracts Regulations:** the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

**Engage:** the employment of a Nanny by the Client or engagement directly or indirectly by the Client through any employment business other than through the Company (whether for a definite or indefinite period) as a direct result of any Introduction or Engagement and the terms **Engaged** or **Engagement** shall be construed accordingly.

**Instructions:** the instructions provided by a Client, whether orally or in writing, to the Company to effect Introductions to or Engagements for him / her for the purpose of obtaining childcare on a permanent or temporary basis.

**Introduce:** the provision to the Client of information by the Company which identifies the Nanny and **Introduction** and **Introduced** shall be construed accordingly.

**Introduction Fee:** the amount set out in Clause 6.3.

**Minimum Qualifications:** Nannies who have passed an advanced DBS Check and who meet the minimum qualifications set out in the Client Specification.

**Nanny or Nannies:** a person (who may be male or female) who possesses the Minimum Qualifications and has the skills and experience to perform the Services.

**Relevant Period:** shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

**Screen:** carrying out pre-vetting checks to the level and criteria as required by the Client from time to time and **Screening** shall be construed accordingly.

**Services:** the duties and responsibilities to be provided by the Nanny as set out in the Client Specification.

**Trial Period:** the period of two months following the commencement of an Engagement.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Appendix forms part of this Agreement and shall have effect as if set out in full in the body of these terms.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to **writing** or **written** includes e-mail.

## **2. AGREEMENT**

- 2.1 These Conditions set out the agreement between the Company and the Client for the supply of a Nanny or Nannies by the Company to the Client. The Agreement between the Company and the Client for the provision of the Services, incorporating these Conditions, shall only come into force when the Company 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.
- 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. COMPANY’S OBLIGATIONS**

- 3.1 For the purposes of the Conduct Regulations 2003, the Company acts as an introduction business in relation to the Introduction and supply of a Nanny pursuant to this Agreement. It is not an employer of Nannies.
- 3.2 The Company shall use all reasonable endeavours to Introduce to the Client Nannies who are able to provide the Services in accordance with the Client Specification.
- 3.3 The Company agrees to Screen all Nannies and shall only Introduce to the Client Nannies who meet the Minimum Qualifications.
- 3.4 The Company will take all reasonable steps to introduce Nannies to the Client who are of sound character, honest and reliable but cannot be held responsible for the conduct of a Nanny either before or during the Client’s employment or engagement of the Nanny. The Company accepts no liability for any loss or damage arising from any negligence, misconduct, dishonesty or lack of skill on the part of the Nanny.
- 3.5 The Company does not give any warranty as to the accuracy of the information supplied to them by the Nanny and which is then transferred to the Client. The Company will inform the client within three months of a Nanny being employed or engaged of any information which subsequently comes to light that suggest they are unsuitable for the Engagement with the Client.
- 3.6 The Company warrants that has the necessary expertise to provide the Services and

will perform them in keeping with the highest professional business standards by using appropriately qualified, experienced and trained Nannies

- 3.7 Prior to the commencement of the Engagement, the Company will send the Client written confirmation of:
- (a) the identity of the Nanny; and
  - (b) the Nanny's experience, training, qualifications and authorisations necessary for the Engagement.

- 3.8 The parties shall conduct meetings regularly to review the Services provided by the Nanny. Any resulting changes agreed to the Services, Fees or any other aspect of the Agreement shall be confirmed in writing. Otherwise, the previous arrangements shall apply.

#### **4. RESPONSIBILITIES OF THE CLIENT**

- 4.1 The Client shall specify in full within their Client Specification their exact requirements and provide full details of the type of work and period of Engagement for which the Nanny is required.
- 4.2 The Client shall notify the Company as soon as reasonably possible of its wish to make an offer of employment, or of engagement in relation to self-employed Nannies or a Nanny acting as maternity nurses, to a Nanny and in the event that Client communicates directly to the Nanny of the Nanny's acceptance, as applicable, of such offer.
- 4.3 The Client shall not make any direct communication with any Nanny introduced by the Company until an offer of Engagement has been accepted. All communication must be conducted through the Company.
- 4.4 The Client is responsible for the employment of the Nanny 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 Nanny's original documents upon Engagement and the Company shall accept no liability for any consequences that may arise because of a Client's failure to do so.
- 4.5 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 Nanny.
- 4.6 The Company shall obtain a minimum of two references from each Nanny but it is the responsibility of the Client to satisfy himself as to the suitability of any Nanny, to take up any references provided by the Nanny or the Company and to make appropriate checks of visas, childcare qualifications or driving qualifications.

#### **5. TERMINATION OF ENGAGEMENTS**

- 5.1 If following the commencement of an Engagement and before the end of the Trial Period the Client decides that the Nanny is unsuitable to perform the Engagement for

any reason then the Client will give notice to the Company of that fact with an explanation of why the Nanny is unsuitable.

5.2 Notwithstanding the provision of notice by the Client to the Company, the Client shall be responsible for terminating the Engagement with the Nanny in accordance with the contract between the Client and the Nanny, failing which in accordance with statutory provisions relating to termination of employment.

5.3 If the Nanny leaves the employment of the Client before the end of the Trial Period (other than as a result of a breach by the Client of the contract of employment between the Client and the Nanny or a result of the Client's dismissal of the Nanny other than for reasons of gross misconduct on the part of the Nanny ("gross misconduct" being as determined in accordance with guidance set out by ACAS)) then the following provisions shall apply:

- (a) These provisions shall only apply if the Client has paid the appropriate Introduction Fee and any other charges under this agreement in full.
- (b) These provisions shall only apply if the Client has notified the Company in writing within three working days of the Nanny's failing to take up the employment or leaving the Client's employment or engagement.
- (c) The Company shall make further Introductions to the Client at no further charge for a replacement for the Nanny who has not taken up or who has left the Client's Engagement, or alternatively if unable to offer a suitable replacement within four weeks, will offer a refund based on the following:

Nanny leaves within 2 weeks:	80% refund
Nanny leaves within 4 weeks:	60% refund
Nanny leaves within 6 weeks:	40% refund
Nanny leaves within 8 weeks:	20% refund

5.4 If the Nanny leaves the Client after eight weeks, for whatever reason, there will be no refund or replacement.

5.5 The Company shall use all reasonable endeavours to find a replacement with no further charge if a Nanny leaves the Client during the Trial Period. Once one free replacement has been found, no further refunds or replacements shall be offered. If the Client finds a nanny through another agency or alternative means within four weeks of the date of termination notified in writing by the Client to the Company, no refund shall be given. Thereafter if the Client finds a replacement nanny from sources other than the Company shall refund part of the Fee in the circumstances as set out in Clause 5.3.

5.6 At the point of assigning a replacement, the Trial Period will start again. The Company will only find one replacement before a second Introduction Fee is charged. A suitable replacement will be defined by the Client's details in 'Appendix 1' but the Company does not guarantee any replacement will be found.

## **6. FEES**

6.1 Upon confirmation by a Client to the Company that a Client wishes to interview a Nanny / Nannies for a potential Engagement, the Client shall pay a £50 registration fee to the Company prior to the interview taking place and details confirmed for such

an interview by the Company to the Client.

- 6.2 Upon confirmation of an Engagement of a Nanny by the Client either orally or in writing, the Client shall pay the Company the Introduction Fee to the Company as detailed in the invoice sent to the Client by the Company within seven Business Days of receipt of the invoice.
- 6.3 The Introduction Fee shall be 10% of the Nanny's gross annual salary.
- 6.4 The Client will pay the Introduction Fee notwithstanding a cancellation by the Client unless the offer of Engagement is withdrawn more than 14 days prior to the agreed commencement date of Engagement.
- 6.5 With regards to the Engagement of a Nanny for short-term holiday purposes, such period being 8 weeks or less, the Client will be charged 25% of the total amount earned by the candidate. This fee has a minimum charge of £200.
- 6.6 The details within the Client Specification may be amended from time to time provided both the Company and the Client agree. The Company reserves the right to vary the Fees in the event of any changes being made to the Client Specification.
- 6.7 If the Client fails to make any payment due to the Company under this Agreement by the due date for payment, then, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.8 If a Client wishes to share a Nanny with another family, the "Client" will be the one deemed to have agreed these Conditions but in such an event, the Client will only have to pay 50% of the relevant Introduction Fee provided that the other family has paid the remaining 50% to the Company directly.
- 6.9 If the Introduction Fee paid relates to a temporary placement of a Nanny 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 Introduction Fees already paid and the permanent Introduction Fee at the time of the change in employment status.
- 6.10 If the Client subsequently engages or re-engages the Applicant within the period of 12 months from the date of termination of the Engagement or withdrawal of the offer, the Client shall be liable to pay a full Introduction Fee calculated and payable in accordance to the Company's fee structure.
- 6.11 The Client is not entitled to withhold any monies due to the Company.
- 6.12 The Client shall be liable for and shall indemnify the Company against all reasonable costs and expenses incurred by the Company in respect of any steps, actions or proceedings made or brought against the Client by the Company to obtain payment of outstanding Introduction Fees and interest.

## **7. CANCELLATION**

- 7.1 Under the Consumer Contracts Regulations, the Client has the right to cancel this Agreement during the period of 14 days after the Commencement Date. The Client may exercise the right of cancellation by notifying the Company in writing of its wish to cancel.
- 7.2 If the Company has commenced work in connection with proposed Introductions or an Engagement has commenced within the 14-day period referred to in clause 7.1 following (in either case) a request by the Client and the Client subsequently cancels the Agreement before the end of that 14-day period then the Company will be entitled to charge the Introduction Fees, if applicable, in relation to the work or Services which have been performed prior to the cancellation.

## **8. AUDIT AND RECORD-KEEPING**

- 8.1 The Company shall keep and maintain until two years after the Agreement has terminated, or as long a period as may be agreed between the parties, full and accurate records including, in particular:
- (a) the Services provided by the Company under this Agreement;
  - (b) all expenditure reimbursed by the Client;
  - (c) all payments made by the Client;
  - (d) the terms on which it engages any Nannies; and
  - (e) the Screening undertaken on any Nannies.
- 8.2 The Company will comply with legislation covering Data Protection, and both the storage and disposal of confidential information (in both electronic and paper format) on Nannies and Client Families. The Company is registered with the Information Commissioner's Office entry Z2118203.
- 8.3 The Company only collects personal information for the legitimate business purpose of introducing childcare professionals and domestic staff to Clients and finding positions on a temporary and /or permanent basis for Nannies. All information received is treated as private and confidential, and all steps are taken to ensure that information is protected from unauthorised viewing by up to date computer protection. All personal details on paper are securely stored and shredded when they are no longer required for legitimate business reasons. Personal Information is only kept for the period of time allowed in accordance with the Data Protection Act 1998. For the purposes of the Data Protection Act 1998, the Client consents to the processing of his all or any personal data (in manual, electronic or any other form) relevant to these Conditions, by the Company and/or any agent or third party nominated by the Company and bound by a duty of confidentiality. Processing includes but is not limited to obtaining, recording, using and holding data and includes the transfer of data to any country either inside or outside the EEA.
- 8.4 With regards to Equal Opportunities Policy, the Company will strive to ensure that no Client or Nannies will ever be treated unfavourably in any part of its recruitment or placement process due to their disability, gender, race, sexual orientation, religion or belief or in any other professional dealings.
- 8.5 The Company aims to provide only the highest level of service. However, the

Company does recognize that sometimes it may fall short of this objective. To this aim, the Company has devised a complaints policy that will ensure that it offers the highest quality service. If a Client wishes to make a complaint, in the first instance, it should telephone James McCrossen on 02030926292 who will aim to resolve any complaint, quickly and with politeness and consideration. If a Client does not feel satisfied and wishes to make a formal complaint, then it should submit a written statement of the complaint to James McCrossen via email info@mannyandme.com who will diligently investigate the complaint further and a written response will be forwarded within 15 days. If a Client does not feel satisfied after the informal and formal complaint then it should direct its complaint to The Employment Company Standards Inspectorate Dept of Trade and Industry (UG65)1 Victoria Street, London SW1 H0EX.

## **9. INDEMNITIES AND INSURANCE**

9.1 The Company's liability to the Client under the Agreement for any losses, damages, claims or expenses which are incurred by the Client arising out of, connected with or resulting from the negligence of the Company or the , misrepresentation, breach of any obligation to be performed by the Company under this Agreement or any other circumstances giving rise to a liability shall be limited to the total amount recoverable under the Company's professional indemnity insurance in relation to all claims made by the Client under the Agreement except that this limit of liability will not apply where the claim against the Company relates to either:

- (a) death or personal injury resulting from the negligence of the Company or the Nanny;
- (b) fraud or fraudulent misrepresentation by the Company; or
- (c) any other liability which cannot be excluded or limited by contract.

9.2 The Company shall ensure that are contractually obliged to comply with:

- (a) all relevant statutes, laws, regulations and codes of practice from time to time in force in the performance of an Engagement;
- (b) a restriction not to disclose any confidential information of the Client which they may acquire during the Engagement.

9.3 The provisions of this clause 9 shall survive termination of this Agreement.

## **10. ASSIGNMENT**

10.1 Neither the Client nor the Company shall be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the other party to this Agreement.

## **11. NO PARTNERSHIP OR AGENCY**

11.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

11.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **12. SEVERANCE**

- 12.1 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.
- 12.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **13. ENTIRE AGREEMENT**

- 13.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 13.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **14. THIRD PARTY RIGHTS**

No one other than a party to this Agreement shall have any right to enforce any of its terms.

## **15. NOTICES**

- 15.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its main address; or
  - (b) sent by email to its main email address.
- 15.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
  - (c) if sent by email, at 9.00 am on the next Business Day after transmission.

## **16. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing,

or failure to perform, any of its obligations under this Agreement, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for one month, the party not affected may terminate this Agreement by giving 7 days' written notice to the affected party.

**17. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**18. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**19. 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.

19.1 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).

19.2 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:

(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.

19.3 The Client **DOES NOT CONSENT/CONSENTS** (see appendix to consent or not) to the Agent appointing any third-party processor of Personal Data under this agreement for the purposes of virtual administration or online storage.

**APPENDIX 1**

**CLIENT SPECIFICATION**

<b><u>NAME</u></b>	
<b><u>ADDRESS</u></b>	
<b><u>POST CODE</u></b>	
<b><u>HOME NO.</u></b>	
<b><u>MOBILE NO.</u></b>	
<b><u>EMAIL</u></b>	
<b><u>PARENTS' PROFESSIONS</u></b>	

**CHILDRENS' DETAILS**

<b><u>NAME</u></b>	
<b><u>D.O.B</u></b>	
<b><u>SEX</u></b>	
<b><u>NAME</u></b>	
<b><u>D.O.B</u></b>	
<b><u>SEX</u></b>	
<b><u>NAME</u></b>	
<b><u>D.O.B</u></b>	
<b><u>SEX</u></b>	
<b><u>SPECIAL NEEDS.</u></b>	

**SERVICES REQUIRED**

**Please tick all that apply**

<b><u>FULL TIME</u></b>		<b><u>NANNY SHARE</u></b>	
<b><u>PART TIME</u></b>		<b><u>MALE NANNY</u></b>	
<b><u>TEMPORARY</u></b>		<b><u>FEMALE NANNY</u></b>	
<b><u>LIVE IN</u></b>		<b><u>LIVE OUT</u></b>	

<b><u>SPECIAL REQUIREMENTS</u></b>			
<b><u>DUTIES</u></b>			
<b><u>DAYS</u></b>			
<b><u>HOURS</u></b>			
<b><u>DESIRED HOURLY RATE</u></b>			
<b><u>START DATE</u></b>			
<b><u>DRIVER</u></b>		<b><u>USE OF CAR</u></b>	
<b><u>NON-SMOKER</u></b>			

The Client **DOES NOT CONSENT**  / **CONSENTS**  to the Agent appointing any third-party processor of Personal Data under this agreement for the purposes of virtual administration or online storage.

**We indicate by our signatures that we accept the Terms and Conditions of this agreement.**

<b><u>SIGNATURE(S)</u></b>	
<b><u>DATE</u></b>	