

CREW PLACEMENT - 2024 | Terms of engagement

Terms of engagement

These terms of engagement set out the terms on which Camper & Nicholsons ("C&N") agrees to provide the Client with details of persons who may be suitable to be employed by the Client as Short Term Crew Members or Long Term Crew Members (as defined below) and the terms upon which C&N will be remunerated if the Client employs any such referred person.

1 Definitions

In this Agreement:

Crew Member means a person employed by the Client as a direct or indirect result of the efforts of C&N;

Client means a person or entity requesting C&N to provide crew members;

Consequential Loss means (i) consequential or indirect loss under applicable law; and (ii) direct or indirect loss of: use, contract, revenue, or (anticipated) profit, howsoever caused, whether or not foreseeable at the effective date of this Agreement;

Fee means the fee payable to C&N by the Client for the placement of a Crew Member, in accordance with Clause 4 below;

Gross Salary means the Crew Member's salary gross of any taxes, fees or deductions of any kind;

"MLC" means the International Labour Organisation (ILO) Maritime Labour Convention (MLC,2006) and any amendment thereto or substitution thereof;

Long Term Crew Member means a Crew Member who is employed, or intended to be employed by the Client for 91 days or more;

Shipowner shall mean the party named as "Shipowner" on the Maritime Labour Certificate for the Vessel;

Short Term Crew Member means a Crew Member who is employed, or intended to be employed, by the Client for 90 days or less;

Services means the services to be rendered by C&N to Client, as described in the Agreement.

2 Placement

Following a request from the Client, C&N will pass the curriculum vitae or other relevant details of any available persons who are known to C&N and that C&N believe may be suitable to meet the requirements of the Client.

3 Notification

The Client agrees to notify C&N promptly:

3.1 Of any offers of employment tendered to a person introduced by C&N;

3.2 Whether the offer has been accepted;

3.3 The details of any accepted offer including the Crew Member's name, start date, position of employment, location of employment and Gross Salary; and

3.4 If a Short Term Crew Member's employment is extended beyond 90 days.

4 Fees

4.1 The Client agrees to pay a Fee to C&N for the placement of a Crew Member in accordance with the following schedule:

Short Term Crew Member: 25% of the total Gross Salary earned by such Crew Member during his employment with the Client, subject to a €200 minimum fee (the **Short Term Placement Fee**).

Long Term Crew Member: 75% of such Crew Member's first month's Gross Salary (the **Long Term Placement Fee**).

4.2 C&N and the Client agree that its Fee is payable if a person is employed by the Client or any connected party directly or indirectly through C&N's introduction.

4.3 C&N will issue an invoice to the Client for the Fee and the Client agrees to pay C&N by the due date indicated on the invoice.

4.4 C&N shall be entitled to charge interest at the rate of EURIBOR + 2% per month on any Fee or part thereof that remains unpaid after the due date indicated on the invoice.

4.5 If a Short Term Crew Member's employment is extended by the Client to 91 days or more, then the Long Term Placement Fee shall become due and C&N agrees to credit the Short Term Placement Fee paid by the Client for that Crew Member toward the Long Term Placement Fee.

4.6 Should a Crew Member who has been initially introduced and presented to the Client by C&N be engaged by the Client in employment within a period of one year of the date of that introduction, either as a Short Term Crew Member or Long Term Crew Member, the Client agrees to pay the Fee to C&N for the service provided each time the Crew Member is hired.

4.7 If a Crew Member who has been introduced to a Client is referred to or their curriculum vitae is provided to another vessel looking for crew and is subsequently employed by them within a period of one year of that introduction the Fee will be payable by the Client to C&N.

4.8 If a Crew Member has also been introduced to the Client via another company before the introduction made by C&N, the Client agrees to notify C&N within 48 hours. Should the Client fail to notify C&N, the hired Crew Member will be deemed introduced by C&N, and C&N will charge the Client accordingly.

4.9 Both parties are aware of international fraud and phishing risks and commit to never accept to transfer any sum due to the other party on a bank account which would have been notified by uncertified email or unreliable source. It is each party responsibility to satisfy with the correctness of the bank account details before making any payment and each of them agree to comply with the other party verification procedure.

5 Replacement Policy

5.1 Provided C&N's invoice has been paid by the due date, if a Long Term Crew Member voluntarily leaves the Client's employ without just cause or is dismissed for just cause within 90 days of the start of their employment, C&N will make reasonable endeavours to replace, on one occasion only, that Long Term Crew Member, without any Fee payable by the client.

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- 5.2** If C&N is unsuccessful in replacing the Long Term Crew Member, they agree to credit 100% of the Fee paid by the Client for the placement of the leaving Long Term Crew Member towards the Fee for a future Long Term or Short Term Crew Member. This credit will be valid for 12 months from the termination date.
- 5.3** It is the Client's responsibility to inform C&N of the date and cause for termination of the Long Term Crew Member and notification must be made to C&N within 48 hours of termination to be eligible for a credit toward the Fee for the placement of any Crew Member as set out in Clause 5.2 above.
- 5.4** The replacement policy will not apply if the Long Term Crew Member leaves or is dismissed as result of:
- a) A change in captain;
 - b) A change in the beneficial ownership of the yacht;
 - c) A change in the job responsibilities of the Long Term Crew Member;
 - d) A decrease in salary of the Long Term Crew Member;
 - e) A major change in schedule from that given at the time of hiring of the long Term Crew Member;
 - f) The arrest or detention of the yacht.
- 6** **Terms of employment**
- 6.1** The Client understands that Crew Members hired by the Client are hired at will as employees of the Client and that C&N cannot be held responsible for the actions of the Crew Member in any circumstance. It is also understood that the Crew Members are under no contract with C&N, and that all taxes and employment eligibility requirements are the exclusive responsibility of the Client.
- 6.2** C&N bears no responsibility for travel or repatriation costs to and from interviews or employment engagements. All travel arrangements are the sole responsibility of the Client or Crew Member as agreed between them.
- 7** **The Client agrees to comply with applicable regulations applying to the employment of the Master and Crew Maritime Labour Convention, 2006**
- For commercially registered yachts, the Client agrees:
- 7.1** ensure compliance with the "MLC, 2006" in respect of the Crew placed by C&N; and
- 7.2** procure insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC, 2006.
- 8** **Liability**
- C&N shall be under no liability whatsoever to the Client for any loss, damage or delay howsoever arising in the course of the Services or any task in any way connected with the Services ("Losses"), UNLESS the same is proved to have resulted solely from the willful misconduct of C&N; In such case, C&N's liability for each incident or series of incidents shall never exceed the Fee (or the annual Fee, when applicable) payable hereunder ("Capped Amount").
- For the purpose of this provision, willful misconduct means a personal act or omission committed with the intent to cause harm to people or damage to property, with knowledge that such act or omission would probably result in same.
- The Client shall protect, defend, indemnify and hold C&N and its affiliates companies harmless from and against all claims, demands, proceedings, fines, costs, taxes and expenses in connection to the Losses regardless of cause, to the exception of the Capped Amount and from and against Consequential Loss, regardless of cause.
- 9** **No partnership or agency**
- Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 10** **Dispute Resolution**
- 10.1** This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
- 10.2** The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced before a sole arbitrator.
- 11** **Third party rights**
- No third party shall have any rights under the Contract (Rights of Third Parties) Act 1999 in connection with this Agreement.
- 12** **Insurance**
- The Client agrees to take out and maintain in full force and effect for the duration of this Agreement all appropriate insurance relating to a Crew Member.

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13 Assignment

- 13.1** C&N may, at any time, assign (absolutely or by way of security and in whole or in part), subcontract, transfer, or deal in any manner with the benefit of any or all of C&N's obligations or any benefit arising under or out of this Agreement.
- 13.2** The Client shall not, without the prior written consent of C&N assign (absolutely or by way of security and in whole or in part), subcontract, transfer, or deal with any of its rights and/or obligations under or arising out of this Agreement.

14 Data-protection laws

The Client acknowledges that C&N is subject to Data Protection laws and expressly agrees that C&N will process the Client's data including any Client and crew's personal data as necessary to perform the Services or any other services C&N may propose. Schedule 1 related to the protection of personal data shall apply in full to the Services.

15 Waiver

The parties agree that a failure or delay by either party to enforce any of the provisions set out in this Agreement shall not be construed as a waiver.

SCHEDULE 1 - Privacy Policy – Protection of Personal Data

This policy is drafted in accordance with the provisions of the EU General Data Protection Regulation No. 2016/679 ("GDPR"). Its purpose is to inform the Client about the way its personal data is processed by C&N (or the "Controller") as controller of the processing of the said personal data (the "Processing"). The Controller reserves its right to amend this policy as necessary to comply with the law.

1 Purposes of the Processing

C&N collects and processes the Client's personal data in accordance with the GDPR for (i) the performance of the Agreement and of the C&N's obligations pursuant to it; (ii) to send the Client communications in relation to the Services provided under the Agreement that may be of interest and which may include events, offers, information, campaigns, activities and promotions. The Client may object to these communications by ticking the relevant boxes on C&N's data collection form or at any time by sending an email to C&N at the address specified in paragraph 2 below or by clicking on the link provided in any communication email sent by C&N.

2 Contact details

The Client may contact C&N by the following means as regards its personal data:
Email: dpo@camperandnicholsons.com

3 Nature of the personal data collected

- Client's personal details (First Name, Last Name, Email Address, Contact Number, Postal Address, Company and Position)
 - Commercial data
 - Payment data (Invoice, Means of payment)
 - Customer service exchanges related to the performance of the order
- C&N shall be entitled to rely upon the accuracy and completeness of Client provided personal data and shall not be required to verify the same.

4 Length of data retention

Personal data are kept for the duration of the contractual relationship between the Client and C&N. The Client's personal data will be deleted from C&N's IT systems within 6 months following the termination of the Agreement. However, C&N will continue to hold some of the Client's personal data to comply with its statutory obligations for a period of 10 years. In addition, the Client's personal data may be archived for reasons of legal certainty, particularly in the context of litigation for the establishment, exercise or defense of the legal rights of each of the Parties.

5 Rights of the Client

The Client is informed that it has the following rights:

- **a right of access**, i.e. the right to obtain the list of personal data processed by the Controller;
- **a right of rectification**, i.e. the right to request the rectification of its personal data if it is inaccurate or incomplete;
- **a right of deletion**, i.e. the right to request the deletion of the data for legitimate purposes, except if the Controller needs to keep the data for the recognition, exercise or defense of a legal claim;
- **a right to withdraw consent**, i.e. the right for the Client to withdraw its consent to the processing of its personal data when the processing does not have a legal basis;
- **a right to object**, i.e. the right to oppose the use of its personal data for certain purposes (commercial for instance);
- **a right to data portability**, i.e. the possibility for the Client to obtain from the Controller a data transfer to another controller and, if technically possible, to obtain a copy of its personal data;
- **a right to the restriction of the processing**, i.e. the right for the Client to suspend the processing of its personal data and to restrict its scope;
- **a right to lodge a complaint** with any data protection supervisory authority.

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6 Exercise of the rights by the Client

The exercise of all of the above-mentioned rights should be carried out by the Client by writing directly to the following email address: dpo@camperandnicholsons.com. The Client will have to justify its identity.

7 Transfer of personal data to third parties

C&N does not sell, rent or share the Client's personal data to or with third parties outside C&N's group of companies. The Client's personal data may be transferred to third parties for the purposes of completing tasks or providing services to the Client on C&N's behalf. These third parties may be: IT services providers, C&N's subsidiaries and/or Hosting companies. When C&N requires services from third parties, C&N discloses only the personal data that is necessary to deliver the Services and signs contract with such third parties requiring them to comply in turn with the GDPR.

8 Transfer of personal data outside the EEA

The processing of the Client's personal data is carried out in the local servers of C&N in Monaco. The Client's personal data may be transferred to countries outside the European Economic Area (EEA), which may have a lower standard of data protection laws than the EEA, such as the United states or Switzerland. When C&N transfers personal data outside the EEA, C&N only does so on the basis of a contract containing data protection provisions directed by the European Commission and ensures that appropriate measures are taken in order to protect the rights and freedoms of its clients in accordance with this policy.

I have read and understand Camper & Nicholson's Terms of Engagement. Should I hire any of the candidates presented to me by C&N, I agree to pay the specified amount.

Signed: _____ Date: _____

Please print name: _____

On behalf of: _____

Vessel: _____