



Permanent Contingent Services - Terms of Business

1. APPLICATION

- 1.1 This document sets out the terms in which we offer to supply our placement services to you. These terms only apply if you accept them.
- 1.2 Acceptance may be express, implied or by conduct and, without limiting the variety of circumstances.
- 1.3 What might constitute acceptance - this occurs if you:
- (a) tell us you have accepted them; or
 - (b) ask us for help to fill a position after you have received a copy of them; or
 - (c) use or disclose, without our consent an offer of work that is made by you or any other person to our candidate.
- 1.4 These terms apply to your engagement of our placement services:
- On a **contingent basis** i.e. where we are only paid a fee if one of our candidates whom we have presented to you accepts a position with you;
- OR someone to whom you have passed on personal information about that candidate without our consent:
- OR other employment service providers have presented the same candidate.
- 1.5 Once they are in operation, these terms remain in force for all future engagements of our placement services unless they have been varied in writing.

2. INTERPRETATION

Annualised Gross Remuneration ("AGR") means the annualised sum of all remuneration payable to a candidate placed (or sought for placement) in accordance with these terms (and if part time, calculated as though on a full time basis), including allowances, superannuation contributions, superannuation guarantee payments, salary sacrificed components and the value of any motor vehicle, telephone, computer, internet, travel, accommodation, reduced interest loan provision, conference or education allowance; or other benefit that forms part of the consideration payable to the candidate for the placement;

Contract means the contract of (or for) employment or other engagement, whether in writing or not, between you and our candidate in relation to the placement;

Our candidate/s means anyone:

- (a) who is seeking a position through us; or
- (b) whom we have identified as a person:
 - (i) who might consider seeking a position through us; and
 - (ii) about whom we are able to provide relevant information regarding that person's availability or suitability for a position.

Placement means the filling of a position that you require to be filled and, where the context so requires, includes a position that a third party requires to be filled;

Related entity has the same meaning as in the *Companies Act 2000* and applies, with the necessary changes being made, if you are not a body corporate under that Act;

Replacement period means the replacement period set out in the Fee Schedule;

Schedule means the schedule included with these terms, which may be substituted as provided from time to time;

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Third party means a person or entity that is not a party to this Agreement;

Us, our or we refers to the supplier named in the Fee Schedule;

You or your refers to the client named in the Fee Schedule and includes any of your related entities for whom you have authority (whether actual, implied or ostensible) to enter into this agreement.

3. PRESENTATION OF OUR CANDIDATES

- 3.1 The presentation of one of our candidates commences when we first forward to you any information about the candidate whether on an identified, anonymous, or pseudonymous basis.
- 3.2 When we first present one of our candidates to you it will be presented on a contingent basis unless stated as being on a retained basis. The basis upon which we present our candidates affects your rights and obligations and the scope of our placement services regarding that candidate. The basis upon which we present one of our candidates may change by agreement with you during the course of presentation.

4. OUR RESPONSIBILITIES

- 4.1 If we present a candidate on a **contingent basis**:
- (a) We will take reasonable steps to ensure that we have the candidate's permission to present that candidate to you;
 - (b) We make no representation that:
 - (i) the candidate will be suitable for any position with you;
 - (ii) the candidate's details and information as shown in the candidate's résumé or other background are accurate, relevant, complete, or up to date;
 - (iii) we have any exclusive entitlement to present the candidate; or
 - (iv) the candidate has not already been presented to you by other means.

5. YOUR RESPONSIBILITIES

- 5.1 When engaged on a **contingent basis**, you agree:
- (a) that if we are engaged on an **exclusive basis** with respect to any position which you require to have filled:
 - (i) you will expressly state the period of our exclusive appointment and confirm it to us in writing;
 - (ii) for the period of our exclusive appointment you will:
 - 1 not brief any other employment service provider or agency with respect to the position;
 - 2 direct any other employment service provider or agency who makes inquiry of you with respect to the position to make inquiry through us;
 - 3 direct any applicant or candidate for the position, whom we have not already presented to you in respect of that position, (including any candidate who applies internally or directly to you or who is referred by any third party) to apply for the placement through us;
 - 4 will use your best endeavours to assist us, in good faith, to fill the position within the period of our exclusive appointment;
 - (iii) following the expiration of the period of our exclusive appointment, unless you have terminated this agreement or no longer require the position to be filled, you will continue to engage and authorise us to recruit for the position;
 - (b) to notify us immediately of:
 - (i) the outcome of any interview between you and our candidate;

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- (ii) any offer (or acceptance of any offer) in relation to the placement of our candidate with you, or a person on whose behalf or for whose benefit you may be acting, or to whom you have communicated any personal information about our candidate. Your notification must include details of the remuneration or benefits offered;
- (iii) your employment or engagement of our candidate;
- (c) to provide us with a copy of the contract or an accurate summary of its contents within seven days of its being agreed by both you and the candidate;
- (d) to include the following information in the contract or summary:
 - (i) the name of the candidate;
 - (ii) the name of the person or entity engaging the candidate;
 - (iii) status of the placement – whether fixed term/task, casual or non-casual and whether as an employment or in some other capacity;
 - (iv) the location of the job;
 - (v) the start date for the placement;
 - (vi) the hours the candidate is to work per week;
 - (vii) a job description describing the work that the candidate will be expected to perform;
 - (viii) the experience, training and qualifications required of the candidate;
 - (ix) details of any authorisation required by law or any other professional body in order for the candidate to undertake the placement (including but not limited to professional registration or validation); and
 - (x) the candidate’s remuneration;
- (e) to pay us our fee for the placement or our candidate if you breach any contract for the employment or engagement of our candidate before the placement is complete and the contract terminates for that reason;
- (f) that you are responsible for satisfying yourself:
 - (i) that our candidate has the qualifications, training, and experience necessary to undertake the placement and
 - (ii) that our candidate meets any suitability, security, trade, professional, or occupational health and safety requirements imposed by law in order to work in the placement;
 - (iii) that you will not require us to act in a way that would result in our (or our consultants) breaching Recruitment & Consulting Services Association Limited’s (“RCSA”) Code for Professional Conduct (“the Code”) whilst the Code continues to bind us;
 - (i) that our candidate meets any other inherent requirements of the placement;
- (g) that you are responsible for obtaining work permits or the appropriate authorisation for the candidate to work, including the provision of any required documentation about the placement that our candidate requires in order to apply for any necessary work permit, work authorisation, visa or entry clearance including certification of suitability to work with any special population;
- (h) that you will not seek or receive any unlawful premium in respect of the engagement of our candidates regardless of whether it is to be paid by the candidate or by any other person. For the purpose of this provision “premium” includes a consideration, gift, allowance or forbearance for the engagement of our candidate;
- (i) to pay our Fees and Charges

5.2 When engaged on a **contingent basis**, we will charge you the fee set out in the Fee Schedule if, within 12 months of our last presentation of our candidate to you, that candidate accepts a position with:

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- (a) you, or
 - (b) another person
 - (i) on whose behalf or for whose benefit you may be acting, or
 - (ii) to whom, without our consent, you have disclosed personal information about that candidate that we have provided to you.
- 5.3 If any component of our fee is calculated in whole (or in part) as a percentage of AGR and AGR has not been agreed with the successful candidate at the time when we may invoice you for payment, AGR will be calculated on the basis of the highest AGR advised to us by you at any time up to invoicing.
- 5.4 If we present one of our candidates for a placement that attracts commission or earned bonuses as part of the remuneration and our fee is calculated in whole or in part as a percentage of AGR:
- (a) we will provide to you our estimate of the AGR inclusive of the commission and earned bonus and attempt to agree it with you;
 - (b) AGR for the purpose of calculating our fees:
 - (i) will be calculated having regard to the estimated commission/bonus earnings indicated by any position description, authorised job advertisement, or key performance indicators that may be available;
 - (ii) if our estimate is disputed in writing within one business day of its being provided to you, will be the amount determined by a person nominated by the CEO for the time being of RCSA, who shall act as an expert and not as an arbitrator;
 - (iii) if not disputed in the manner set out at sub paragraph (ii) above, will be deemed to be the amount provided in our estimate.
- 5.5 We will notify you of our anticipated charges for advertising and any other services provided by third parties that you expressly authorise us in writing to incur.
- 5.6 All fees and charges quoted by us are exclusive of GST. GST at the prevailing rate will be added to our tax invoices.
- 5.7 You must pay our fees and charges (including any GST component), within 7 days. If you do not pay our fees and charges by the due date you must pay us the amount outstanding together with interest calculated on a daily basis at the rate shown in the Fee Schedule.
- 5.8 No claim or dispute raised with respect to our charges entitles you to set off against, or withhold payment of, the unpaid sum of our invoices.
- 5.9 You indemnify us for any costs (including legal costs on a solicitor and client basis) that we incur in taking any lawful steps to obtain overdue payment. You agree that we may recover the amount of those costs from you as a debt upon production of an invoice, which shall be sufficient proof of their amount.

6. REPLACEMENT

- 6.1 If within the replacement period, one of our short listed candidates whom we have placed with you:
- (a) performs unsatisfactorily in the placement for which he or she was presented and the placement is terminated for that reason; or
 - (b) terminates the contract
- then, subject to clause 6.2 and 6.3, we will use our best endeavours to present a replacement candidate at no extra fee.
- 6.2 Our obligations under clause 6.1 arise if and only if:
- (a) you pay or have paid our invoice by its due date;
 - (b) you notify us immediately in writing of any circumstance that may result in our being required to perform our obligations under this clause 6;
 - (c) you have provided accurate information on a regular basis during the replacement period so that we can conduct confidential and timely performance checks (and counselling) with you and with the candidate for our own benefit and at our discretion. You release us from any obligation to pass on to you any information we collect from the candidate;
 - (d) you notify us in writing of the termination of the employment, engagement or contract promptly, stating the date and reason(s) for termination;
 - (e) you have made a reasonable attempt to induct and orient the candidate into the workplace;
 - (f) you have fulfilled all your other obligations arising under this agreement in respect of the placement;
 - (g) the termination of the candidate's placement is not due to:
 - (i) any false or misleading representation made to the successful candidate in connection with the placement;
 - (ii) redundancy, retrenchment, or your operational requirements;
 - (iii) any action on your part which might make the termination of the successful candidate's employment or engagement unlawful, harsh, unjust or unreasonable; or
 - (iv) any breach by you of the terms of the contract with the successful candidate; and
 - (h) you agree to pay any advertising or additional charges which you authorise us to incur in locating another suitable candidate.
- 6.3 The provisions of clauses 4, 5, 7 and 10 of these terms apply to the presentation of a replacement candidate.
- 6.4 If a replacement candidate is placed under this clause 6 at a higher AGR than the original candidate AND our fee was calculated in whole or in part as a percentage of AGR, we may claim an additional fee referable to the increased AGR. However, no refund or credit will be paid by reason only that the AGR referable to the replacement candidate is lower than that of the original candidate.

7. EXCLUSIONS

- 7.1 Because you are ultimately responsible for your decision to employ or engage our candidates and because once they are employed or engaged they work under your control, supervision and direction:
- (a) (NO REPRESENTATIONS)
We make no representation or guarantee that they will achieve a certain level of performance, achieve a certain outcome, solve a particular problem, or attain a specific goal;
 - (b) (REDUCED LIABILITY & INDEMNITY)

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- (i) Subject to sub-paragraph (ii) of this sub-clause, we will not be liable to you for, and you will hold us harmless against any liability for, damage, loss or injury of whatsoever nature or kind, however caused whether directly or indirectly and whether by our negligence or that of one of our candidates (including their servants or agents) once they are engaged by you;
- (ii) Sub-paragraph (i) of this sub-clause does not reduce our liability, directly incurred, to the extent to which it may have contributed to any such damage, loss or injury; and
- (c) (IMPLIED TERMS)
Our liability for any breach of a term implied in this agreement by any Act of Parliament will be limited, at our option, to providing, or paying the costs of providing, the services again.

7.2 The provisions of this clause 7 continue to bind the parties after this agreement ends.

8. TERMINATION

- 8.1 Either of us can terminate this agreement by providing 14 days written notice.
- 8.2 We can terminate this agreement immediately and without incurring any liability to you as a result, due to:
 - (a) any failure by you to pay any amounts outstanding to us; and/or
 - (b) a breach of clause 5 or 10 of these terms.

9. DISPUTE RESOLUTION

- 9.1 If any dispute between the parties arises about the terms of this agreement or its effect the parties will firstly try to resolve the dispute by negotiation, mediation or expert appraisal. If, after a reasonable time, the dispute has not been resolved, the parties will refer the dispute to a process of dispute resolution agreed between them and, failing agreement, to a process of commercial arbitration by a person nominated by the CEO for the time being of RCSA. Nothing in this clause ousts the proper jurisdiction of a court or tribunal with respect to the subject matter of the dispute.

10. PRIVACY & CONFIDENTIALITY

- 10.1 You agree to preserve the privacy of personal information concerning any of our candidates whose personal information has been provided to you, or accessed by you, to a standard not less than that prescribed by the *Privacy Act 1988* (Commonwealth); and additionally to hold yourself as a trustee of the promise to do so for the benefit of our candidate.
- 10.2 So far as the law allows, you must maintain the confidentiality of any information that we communicate to you and identify as being confidential (including the fact that one of our candidates may be seeking a new position). You must not use or disclose confidential information that we communicate to you without our written consent. For the purposes of this sub-clause you may use confidential information that we have communicated to you about our candidate for the purpose of engaging our services.
- 10.3 You must identify any information that you require us to keep confidential. If you do not expressly identify information that you communicate to us as being confidential we may use and disclose it as we think fit for the purpose of providing or offering our placement services to you; and you must indemnify us against any claims (including costs) for breach of confidentiality that may flow from our use or disclosure of it.
- 10.4 For the purposes of clause 10.3 the following information is expressly identified as being confidential, namely information about:
 - (a) your current staff;
 - (b) your human resources strategies;

We will not use or disclose it without your consent.

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11. WAIVER

11.1 If we do not take action to enforce or require strict compliance with your obligations and responsibilities under these terms, or if we grant you any extension or indulgence in the performance of your obligations, we may still exercise all our rights as though they were fully available to us.

12. JURISDICTION

12.1 These terms are governed by and will take effect in accordance with the laws in force in NSW jurisdiction.

13. SEVERANCE

13.1 If any of these terms is held to be invalid in any way, or unenforceable, it will be severed, and the remaining terms will not be affected or impaired; but will be construed so as to most nearly give effect to the intent of the parties at the time it was originally executed.

14. ENTIRE AGREEMENT

14.1 These terms represent the entire agreement between us and you in relation to its subject matter. All implied and statutory terms, to the extent to which they are inconsistent with these terms, are excluded to the fullest extent permitted by law.

14.2 By accepting the terms set out in this document, you acknowledge that neither we, nor anyone acting on our behalf, has made any warranty or representation to you in relation to the matters covered by this agreement which is not fully set out in these terms, that you have not relied upon any such warranty or representation, that you have read these terms together with the Schedule, and that you have understood them.