

NORTEC Employment and Training Limited – Terms & Conditions of Temporary Placement

- 1. Definitions**
- 1.1 "Seller" shall mean NORTEC Employment and Training Limited its successors and assigns or any person acting on behalf of and with the authority of NORTEC Employment and Training Limited.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations.
- 1.5 "Candidate" shall mean any Candidate placed for employment with a Client on a temporary, casual, or part time basis.
- 1.6 "Fee" shall mean the cost of the Services as agreed between the Seller and the Client subject to clause 4 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Seller from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
- 2.5 All information regarding Candidates, whether written or verbal, is supplied in confidence and is not to be disclosed to any other party without the express written consent of the Seller.
- 3. Services**
- 3.1 The Seller undertakes to:
 - (a) use its best endeavours to provide Candidates as requested by the Client; and
 - (b) deduct the requisite amounts of income tax, union dues and all other applicable deductions as required by Australian law; and
 - (c) ensure payments of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
 - (d) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.
- 4. Fee Structure**
- 4.1 At the Seller's sole discretion;
 - (a) the General Services Fee shall be as indicated on invoices provided by the Seller to the Client in respect of Services supplied; or
 - (b) the Fee, subject to clause 4.2, shall be the Seller's quoted Fee which shall be binding upon the Client provided that the Client shall accept in writing the Seller's quotation within thirty (30) days.
- 4.2 Rates for Candidates vary from time to time as a result of changes to applicable award provisions, changes to applicable State or Federal legislation including but not limited to superannuation and the length of an assignment. All inquiries concerning rates must be directed to an authorised representative of the Seller.
- 4.3 At the Seller's sole discretion a deposit may be required.
- 4.4 Where fringe benefits apply, such as car allowance, superannuation etc they are regarded, as a part of a Candidate's remuneration, and this factor will be included when assessing the Fee.
- 4.5 The Seller will invoice the Client weekly for the total hours worked by each Candidate at the applicable hourly rate for that week. In addition to the standard hourly charge, further charges will apply in accordance with any relevant federal or state award.
- 4.6 The Seller reserves the right to charge a permanent placement Fee (subject to clause 4.7) where the Client either:
 - (a) engages the Candidate as an employee; or
 - (b) introduces the Candidate to another person or organisation who engages the Candidate as an employee or as an independent contractor; within the agreed period of the temporary contract or within three months following the expiry of the temporary contract.
- 4.7 The permanent placement Fee will be as advised by the Seller to the Client at the time of quotation.
- 5. Payment**
- 5.1 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 5.2 At the Seller's sole discretion;
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment for approved Clients shall be made by instalments in accordance with the Seller's payment schedule.
- 5.3 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 3% of the Price), or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 5.4 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 6. Delivery of Services**
- 6.1 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 6.2 The Seller shall not be liable for any injury, loss and damage or expenses incurred by the Client in connection with the supply of or failure to supply Candidates pursuant to these terms and conditions regardless of any errors or mistakes, negligence, dishonesty, misrepresentation or otherwise if such acts are performed by any employment agency engaged on behalf of the Seller or Candidates supplied pursuant to these terms and conditions.
- 7. Clients Disclaimer/Indemnity**
- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Client acknowledges that he buys the Services relying solely upon his own skill and judgement.
- 7.2 The Client undertakes to indemnify the Seller against any loss or damages suffered and/or any costs incurred by the Seller as a result of any direct or indirect consequence of the employment of Candidates including but not limited to circumstances involving contributory negligence.
- 7.3 In no circumstances shall the Seller be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of or caused by any act or omission of a Candidate whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify Candidates against all such liability whether alleged or proved. The Client is to include all Candidates in the Client's own public liability insurance cover.
- 8. Cancellation**
- 8.1 The Seller may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 8.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 10. Default & Consequences Of Default**
- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 10.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller exercised its rights under this clause.
- 10.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

- 11. Privacy Act 1988**
- 11.1 The Client and/or the Guarantor/s agree with the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.
- 11.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 11.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 11.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
 - (a) provision of Services; and/or
 - (b) marketing of Services by the Seller, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 11.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 12. Seller Disclaimer**
- 12.1 The Seller endeavours to provide accurate background on Candidates qualifications and experience. However these details are based on information made available by Candidates and referees. Therefore no responsibility can be accepted by the Seller for errors, omissions, or incorrect conclusions.
- 12.2 Whilst the Seller makes every effort to submit Candidates that are suitable for Client needs, no liability will be accepted for any loss, or damage, or other costs irrespective of how they are caused which a Client may suffer, or for which a Client may become liable arising out of, or in connection with the introduction of a Candidate to a Client company.
- 13. Seller's Undertakings**
- 13.1 The Seller agrees to use its best endeavours to supply suitable, competent Candidates to its Clients based on the Client's requirements. The Client agrees to clearly instruct the Seller of its requirements for Candidates and to notify the Seller immediately if there is any change in those requirements.
- 13.2 The Seller agrees to use its best endeavours to supply equipment, accessories and/or anything else that has been negotiated between the Seller and the Client and is stated in the Seller's quotation.
- 13.3 Minimum booking for Candidates is four (4) hours. Cancellation of booking must allow Candidates travelling time from home to place of assignment.
- 13.4 In the event that the Seller receives notice from the Client that the Client is dissatisfied with a Candidate provided by the Seller, within four hours of that Candidate commencing, no charge will be made to the Client for the four hours worked by the Candidate.
- 13.5 Every effort is made by the Seller to ensure the highest standards of integrity within their Candidates. However, no responsibility shall be accepted by the Seller for any error, loss, expense, damage or delay that arises where a Candidate has been required as part of any assignment to handle money's, securities, valuables or confidential information.
- 13.6 The Seller may replace a Candidate at any time with another Candidate of comparable qualifications without notice to the Client however the Seller shall endeavour to notify the Client before doing so.
- 14. Client's Responsibilities**
- 14.1 The Client undertakes to have each weekly time sheet of each Candidate approved and endorsed by an authorised person employed by the Client within twenty four (24) hours of completion.
- 14.2 The Client agrees that if they are dissatisfied with a Candidate provided by the Seller that they will:
 - (a) speak to the Seller directly about replacement of that Candidate; and
 - (b) not imply or communicate anything to the Candidate that would indicate that their contract is going to be terminated.
- 14.3 The Client agrees to immediately advise the Seller (in writing) of any workplace incident that may give rise to a claim by, against or involving any Candidate provided by the Seller to the Client.
- 14.4 It is the responsibility of the Client to:
 - (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
 - (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
 - (c) provide our Candidate with a workplace-specific and job-specific induction. This induction is to be completed before the Candidate commences work with the Client; and
 - (d) familiarise the Candidate with the Client's operations, facilities, policies and procedures, and properly inform the Seller of any specific requirements of the job for which the Candidate has been hired to perform; and
 - (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including, but not limited to, Occupational Health and Safety legislation) to employers and otherwise to treat Candidate as if they were employed by the Client; and
 - (f) effect and maintain insurance cover in respect of any claims which may be made against the Client by a Candidate that arise as a result of the Client's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by Candidate, and to indemnify the Seller against any such claims; and
 - (g) provide payment for wet weather as per the relevant award, EBA, etc.
- 14.5 The Client acknowledges that they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of Candidates as for employees that have been employed directly by the Client.
- 14.6 In the event of any disputes or claims, you must notify the Seller within thirty (30) days of any such occurrence. If the Client shall fail to comply with this provision the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any disputes or claims.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 15.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.
- 15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.