

## Terms & Conditions of Contract

### *(Permanent Staff)*

*Palmerston North Personnel Limited* ("the Company") locates, selects and refers candidates for permanent employment or engagement as an independent contractor ("Candidate" or Candidates") to client organisations ("the Client") on the following terms and conditions.

#### 1. ACCEPTANCE

- 1.1 These Terms and Conditions apply to all referrals of Candidates for permanent employment or engagement as an independent contractor, subject to any variation recorded in writing and agreed to by the parties.

#### 2. ADDITIONAL AND IMPLIED TERMS

- 2.1 These Terms and Conditions, subject to any addition or variation as provided under clause 1, comprise all of the terms, representations and warranties between the parties and supersedes all prior discussions and agreements covering the subject matter of this agreement.
- 2.2 All implied terms, conditions or warranties are excluded from this contract to the fullest extent permitted by the law.
- 2.3 All representations, warranties or commitments made by a Company agent or representative must be first authorised in writing by a manager or person of authority in the Company. The Company shall not be bound by any unauthorised statement.

#### 3. FEES

- 3.1 The Client will pay a fee calculated in accordance with these Terms and Conditions if a Candidate referred to, or interviewed by, the Client for any position by the Company, is employed as an employee or engaged as an independent contractor by:

- (a) the Client; or
- (b) any other person or organisation to whom the Candidate is referred by the Client

within the period commencing on the initial referral or interview and expiring twelve (12) months after the most recent referral or interview.

- 3.2 For the purposes of this clause 3, "Candidate" includes any person contained in a submission or short list made by the Company to the Client, even though the person may be presented independently to the Client.
- 3.3 The fee payable by the Client for the introduction of a candidate who subsequently accepts an engagement is 11% of the candidate's gross annual remuneration package (a minimum fee of \$3,000.00 plus GST applies) to be received during the first twelve months (remuneration package includes, but not limited to any anticipated annual commissions or bonuses, medical, life or other insurances and vehicles - a company car is valued at \$10,000.00pa) and will be payable by the Client or by the other person or organisation upon offer and acceptance of employment.
- 3.4 Where the Client briefs the Company to provide services on a "client-paid basis" (e.g. for client paid advertising, psychometric assessments, HR consultancy services), this is additional to the fee paid in accordance with clause 3.3 above. The Company and the Client will agree to the fee to be paid for these additional services before they are provided.

#### 4. **PAYMENTS**

- 4.1 The Client will pay all charges (plus GST) which are invoiced by the Company, and all agreed advertising costs invoiced by the Company within fourteen (14) days of receipt of the Company's invoice. The Company may charge interest calculated on a daily basis at 5% above its own bank's base lending rate if payment is not made by due date.
- 4.2 For the avoidance of doubt, any payments to be made under this Agreement are exclusive of GST (if any) and any GST must be added and paid by the person to whom the goods or services are provided.
- 4.3 A claim or dispute raised by the Client does not entitle the Client to set-off against, or withhold payment of, any money owed to the Company.
- 4.4 The cost of recovering any debt owed to the Company by the Client shall be met by the Client.

#### 5. **REPLACEMENT GUARANTEE**

- 5.1 The Company offers a replacement guarantee period of three (3) months from commencement of the successful candidate's employment. If for any reason (other than redundancy/restructure or any change in the original job specification provided to the Company at the time of the appointment) the employee should resign or be terminated within the guarantee period, the Company will undertake to provide a replacement candidate.
- 5.2 The three (3) month replacement guarantee relates specifically to the position placed and the Company reserves the right to negotiate the replacement terms should changes occur to the role parameters.
- 5.3 The guarantee applies only where all money owing under these Terms and Conditions has been paid within fourteen (14) days of receipt of the Company's invoice. Accounts not settled within this period remain due and payable but the replacement guarantee does not apply.
- 5.4 Except as provided in this clause 5, the Client is not entitled to recover any money from the Company.
- 5.5 If the Candidate is dismissed by the Client for cause or leaves during the period of three (3) months and the Company is unable to find a replacement, within a period of six (6) weeks, a credit will be given by the Company to the Client to be offset against future fees (if any) which may become payable by the Client to the Company. Credits will be calculated in the following manner:
- (a) 100% of the fee if the Candidate leaves in the first month;
  - (b) 75% of the fee if the Candidate leaves in the second month;
  - (c) 50% of the fee if the Candidate leaves in the third month.

This credit will be valid for a period of six months from date of issue and can be used for any services with the Company as agreed by both parties.

- 5.6 If within three (3) calendar months of the termination your organisation, or any associated organisation, re-engages the candidate the full fee will again become payable.

#### 6. **TESTING, REFERENCE CHECKING AND SUITABILITY**

- 6.1 The Company will test and reference check Candidates when the Company considers it appropriate and practicable to do so.
- 6.2 The Company will use its best endeavours to make known to the Client the Candidate's employment records, qualifications and salary requirements as accurately and objectively as possible. The Company will not be liable for any untrue statements or misrepresentations made by the Candidate.
- 6.3 Except where the Company is precluded by the Candidate or by law, the Company will not withhold any information about a Candidate which might adversely affect the Client.

#### 7. **LIABILITY**

- 7.1 The Client:
- (a) has absolute discretion as to the employment or engagement of a Candidate; and
  - (b) is responsible for all acts and omissions of the Candidate; and

- (c) is responsible for all remuneration or fees payable to the Candidate.
- 7.2 The Company will not be liable for any loss, damage or expense suffered by the Client resulting from the acts or omissions of a Candidate or from any delay or failure by the Company to refer a Candidate to the Client.
- 7.3 The Client indemnifies the Company against any loss, damage or expenses suffered by the Company arising from the referral of, or any acts or omissions of, any Candidate or the Client, or arising from any breach of these Terms and Conditions.
- 7.4 The provisions of this clause 7 continue to bind the parties after these Terms and Conditions have ceased to apply.

## 8. NATURE OF RELATIONSHIP BETWEEN CLIENT AND CANDIDATE

- 8.1 The parties acknowledge that if a Candidate is employed by the Client, the Client becomes the employer of the Candidate and will be responsible for complying with all legislation (including but not limited to the Employment Relations Act 2000 and the Health and Safety in Employment Act) relating to employers and employees.
- 8.2 If the Client enters directly into an independent contract agreement with the Candidate, the Client will be responsible for any contractual obligations or liabilities arising under that agreement.

## 9. NEGOTIATION OF INDIVIDUAL EMPLOYMENT AGREEMENTS FOR PERMANENT STAFF

- 9.1 The Client's offer of employment to a Candidate must set out in writing, the terms and conditions of employment as set out in section 65 of the Employment Relations Act 2000. The Client must also ensure that the provision of the written offer is given within reasonable time so that the Candidate has the opportunity to seek independent advice prior to signing the employment agreement.

## 10. CONFIDENTIALITY

- 10.1 The Company will keep confidential all information imparted to the Company by the Client which relates to the business of the Client and which the Client declares is confidential.
- 10.2 All information in respect of a Candidate is confidential information imparted to the Client for the sole purpose of enabling the Client to determine whether the Candidate is suitable for employment. The Client will keep such information confidential and will not use it for any other purpose.

## 11. GOVERNING LAW

- 11.1 These Terms and Conditions are governed by New Zealand law.
- 11.2 These Terms and Conditions are binding on, and for the benefit of, the successors of the Client and the successors and assigns of the Company.
- 11.3 The Client may not assign this agreement without the prior written consent of the Company.