

TERMS OF BUSINESS – TEMPORARY

Between
The Recruitment Network (TRN)
&
You (“the Client”)

IT IS AGREED BETWEEN THE PARTIES THAT

1. ABOUT THESE TERMS

- 1.1 These Terms apply to any request you make to us to supply you with Workers, unless otherwise agreed in writing between us.
- 1.2 By you requesting us to supply you with Workers, or you are accepting Workers from us, you are deemed to have accepted these Terms. These Terms will continue to apply until we agree on new terms with you.
- 1.3 We may vary these Terms from time to time, and you are deemed to have accepted the variations from the next request you make to us to supply you with Workers.
- 1.4 In these Terms, “\$” or “dollars” refers to New Zealand dollars and all amounts payable by you are to be paid in New Zealand currency.
- 1.5 TRN refers to The Recruitment Network

2. SUPPLY OF WORKERS

- 2.1 You may notify us (verbally or in writing) of your requirements in relation to our temporary workers (the “Order”). You must provide us with all information reasonably required by us to complete your Order, including the number of Workers and the hours each Worker is required for, details on the workplace and the nature and type of work and any qualifications or special skills to be held by the Workers.
- 2.2 Each Worker must be required for a minimum of four hours in any given shift.

2.3 We will use reasonable commercial endeavours to supply you with Workers pursuant to your Order under clause 2.1. We may supply any one of our Workers to you and/or substitute any one of our Workers for another at any time.

- 1) Rates charged are GST exclusive and covers ACC premiums, superannuation, leave provisions, recruitment, termination and administration costs. All Workers are employees of TRN. and are paid directly by TRN. Where overtime provisions apply, an additional charge will be agreed upon and made. On public holidays the rates charged will be double the hourly rate.

TRN. will provide a timesheet, either paper or on our digital portal for the purpose of recording the hours worked by the Worker on assignment. This timesheet is to be approved and returned by 9am the following Monday. At such time, if the approved timesheet is not received from the client, TRN. will void the requirement of client approval and accept the submitted hours from our Worker.

3. OUR GUARANTEE

- 3.1 We guarantee that our Workers will be suitable to carry out the work for you, to the extent of the information disclosed by you to us under clause 2.1, in that our Workers will:
 - a) carry out the work in a proper and workman like manner; and
 - b) exercise the degree of skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced Worker in the same or similar

circumstances in accordance with good industry practices.

3.2 If any of our Workers prove unsuitable to carry out the work for you, we will use reasonable commercial endeavours to replace the unsuitable Worker as soon as practicable, and will not charge you for the time worked by the unsuitable Worker, provided that:

- a) where the Worker's shift is seven hours or more, you give notice to us within the first four hours of the Worker starting their shift; or
- b) where the Worker's shift is less than seven hours, you give notice to us within the first two hours of the Worker starting their shift.

4. CHARGES AND PAYMENT

4.1 The charges payable by you for each Worker will be:

- a) calculated on a time in attendance basis (including time for rest breaks, but excluding time for meal breaks), rounded to the nearest quarter hour; and
- b) based on our standard hourly rates unless any of the circumstances set out in clause 4.2 apply.

4.2 If any of the following circumstances apply, the charges payable by you under clause 4.1 will be based on the following rates:

- a) if a Worker works on a public holiday, the rate will be 2 times our standard hourly rate

4.3 All charges are quoted exclusive of GST. You will pay GST to us at the same time and in the same manner as the payment of the supply to which the GST relates and at the rate applicable at the time of the invoice.

4.4 We will issue our invoices to you on a weekly basis. Subject to clause 4.7, you are required to make payment to us (not to the Workers) as set out in the invoice. Payment in full is due within seven (7) days of the invoice date, without set-off, counterclaim or deduction of any kind.

4.5 If you fail to pay any amount when required under the Agreement, we reserve the right to suspend delivery of any Order without incurring any liability whatsoever and all amounts owing by you become immediately payable. You shall be liable for all expenses and costs (including legal and debt collection) in relation to collection of outstanding amounts under this Agreement.

4.6 We may increase the rates set out in schedule 1 from time to time to consider an increase to the minimum wage and/or a change in any contributions, levies or taxes we are required to make at law in respect of our Workers. We will give you notice in writing of any proposed changes to the rates and the new rates will take effect from the date specified in that notice.

4.7 If you cancel an Order for a Worker without giving us at least four hours' notice prior to that Worker's shift starting, we will charge you a cancellation fee. This cancellation fee will be the sum of the charges that you would have paid for that Worker for that cancelled shift or as otherwise agreed between the parties.

5. ENGAGEMENT AND FURTHER ENGAGEMENT

A Worker introduced or referred by TRN. and subsequently:

- a) employed by the client, or any associated organisations; or
- b) engaged by the client through another agency,

whether on a paid or unpaid basis during an assignment or within a period of six months from the date of the last assignment, will be deemed a temporary to permanent placement and a placement fee will apply and become immediately payable to TRN. This placement fee will be calculated at 10% of the annual salary offered to the candidate unless otherwise negotiated and will be quoted upon request.

The client is obliged to contact TRN. as soon as reasonably practicable after the WORKER has entered into an employment contract with the client. TRN will issue an invoice to the client for the placement fee which will be payable within fourteen (14) days of the date of invoice.

For the avoidance of doubt, TRN. makes no guarantees in respect to temporary to permanent placements

If we supply, introduce or refer a Worker to you, and at any time during the six months thereafter you (or any related person or company) employ that Worker or engage that Worker through another agency, you are deemed to have found the Worker through us and you will be required to pay a placement fee to us.

This placement fee will be calculated at 10% of the annual salary offered to the candidate unless otherwise negotiated and will be quoted upon request

For the avoidance of doubt, TRN. makes no guarantees in respect to temporary to permanent placements

- 5.1 If payment is not received by the due date, we may require you to pay interest at a rate of 2.5% on all amounts remaining unpaid from the due date until the date of payment in full.
- 5.2 For the avoidance of any doubt, our guarantee given in clause 3 does not apply to any Worker engaged by you under clause 5.

6. YOUR OBLIGATIONS

You must keep a written record of the time our Workers start and end their shift with you and provide a copy of this timesheet to us signed (either electronically or manually) by no later than 9am on the Monday following the shift.

- 6.1 If you fail to do so, we may:
 - a) request this information from our Workers, and you will be deemed to have accepted their record of time, which will be used to calculate the charges payable by you under clause 4.1; and/or charge you for any additional cost to us as a result of your failure to provide this information to us
- 6.2 From the time that our Workers report to you to the end of their shift, they are in your care, control and supervision. During this time, you must:
 - a) provide a first day induction to our Workers ensuring they have a clear understanding of how to carry out the work in a proper and safe manner, including but not limited to providing them with any training, brief them on all relevant policies including workplace and occupational health and safety policies.
 - b) You must advise us immediately if our workers are involved in any incidents and/or accidents. You must also provide TRN with the corresponding accident/Incident reports and/or investigation documents thereafter.
 - c) provide our Workers with any extra uniform and/or PPE or such equipment and/or materials required for them to carry out the work in a proper and safe manner. TRN will supply the basic PPE such as Steel Cap boots and a Hi Vis vest, unless otherwise agreed upon.
 - d) provide adequate supervision, instruction and direction to our Workers.
 - e) not allocate tasks or responsibilities to our Workers, or allow our Workers to carry out or be involved in any work which you have not identified in the Order or which our Workers do not hold the necessary qualifications or have the necessary training or licenses to do so.
 - f) promptly notify our Workers and us of any risk in the workplace which may cause danger to our Workers, and take steps to prevent, reduce or minimise such risk.
 - g) comply with all obligations, duties, laws and regulations (whether statutory or otherwise), including in respect of workplace and occupational health and safety, and discrimination and harassment; and
 - h) comply with any of our reasonable requests in relation to our Workers.
- 6.3 In addition to those obligations under clause 6.2, you have an ongoing obligation to:

- a) promptly notify us of any performance issues in respect of our Workers.
- b) not on-hire or resupply our Workers to any other person or company; and
- c) hold and use all information we provide to you about our Workers, including the fact that they are looking for work, strictly in accordance with the Privacy Act 1993 at all times.

7. WARRANTIES

7.1 Other than the guarantee given in clause 3, all express or implied or other representations or warranties in relation to the Workers are expressly excluded to the maximum extent permitted by law, including but not limited to the fines and/or penalties prescribed by the Health and Safety at Work Act 2015

8. LIABILITIES AND LIMITATION OF LIABILITY

8.1 TRN. is not liable for: -

- a) any loss, expense, damage or delay arising from any failure to provide staff for all, or part of the period of the booking or errors made by, or misconduct of staff provided.
- b) in respect of any damage, loss or injury of whatsoever nature or kind, however caused, whether by our negligence or the negligence of one of our workers, the Workers, our servants or agents or others, be suffered or incurred, whether directly or indirectly, in respect of the service provided under these conditions of assignment.
- c) Any amount exceeding the fees paid for the Worker by the Client.

9. From the time that our employees or independent Worker's report to the client for their duties, they are the care, control and supervision of the client for the duration of the assignment. The Worker shall be under the direction and control of the Client for the time of commencement of duties and for the duration of the arrangement.

- 10. The client is responsible for all the acts, errors or omissions whether willful or negligent or others of the Worker and shall ensure compliance with all statutory requirements relating to the Worker.

10.1 In no event will we be liable to you, whether in contract, tort, negligence or in any other way, for any:

- a) loss, damage, cost or expense of any kind whatsoever in connection with any delay or failure to provide any Workers for all or part of an Order or shift, or any errors or mistakes made by our Workers, or misconduct of our Workers.
- b) loss of profits or savings, loss of revenue, loss of goodwill or opportunity; or
- c) loss, damage, cost or expense of any kind whatsoever which is indirect, consequential or of a special or punitive nature even if such loss, damage, cost or expense was reasonably foreseeable.

11. GENERAL TERMS

11.1 Force Majeure

- a) Notwithstanding any other provision of these Terms, non-performance by either of the parties of any of its obligations (other than to pay money) under these Terms will be excused during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure (as defined in clause 9.1d)).
- b) The party claiming the benefit of this clause will promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance. In the meantime, such party will take all reasonable steps to remedy or abate the Force Majeure.
- c) Performance of any obligation affected by Force Majeure will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.

d) Force Majeure means any event or circumstance beyond the reasonable control of the party claiming the benefit of this clause, and includes, but is not limited to, any:

- i. act of God, fire, earthquake, storm or flood;
- ii. strike, lockout, work stoppage or other labour hindrance;
- iii. explosion, electrical supply failure, nuclear accident or collision;
- iv. sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not),

but does not include lack of funds for any reason

11.2 Disputes: If a dispute arises out of or relates to these Terms or our Workers, the parties will endeavor to resolve the dispute by good faith negotiations between the parties. If the parties are unable to resolve the dispute during negotiations, either of the parties may refer the dispute to mediation by notice in writing by a mediator to be agreed between the parties within five working days of that notice or failing agreement by the President of the New Zealand Law Society or his or her nominee. The parties will share the costs of the mediator equally.

11.3 Amendments: Any amendments or modifications to these Terms must be agreed to by a director of TRN and must be in writing.

11.4 Entire Agreement: These Terms, together with any Order, constitute the entire agreement between the parties relating to their subject matter.

11.5 Waiver: A waiver of these Terms will only be effective if given by us in writing and only to the extent expressly stated to be given. Any waiver will not affect our rights under these Terms at any future time.

11.6 Illegality: If any part of these Terms is illegal, unenforceable or invalid, the remaining provisions, or the remainder of the provision concerned, shall continue in effect.

11.7 Confidentiality: The parties will hold in confidence all information concerning each other or each other's affairs that is acquired while working together. The parties will only disclose confidential information if it is necessary or desirable to enable the party to carry out the other party's instructions or if it is required by law.

11.8 Notices: Notices and other communications are deemed to have been served to either party if they are hand delivered, transmitted by facsimile, posted or emailed. They are deemed to have been received unless the sender should have been reasonably aware that the delivery failed.

11.9 Governing Law: Our relationship with you is governed by New Zealand law and the courts of New Zealand have exclusive jurisdiction.

EXECUTIONS:

Client.....

Name.....

Position.....

Signed..... **Date**.....

The Recruitment Network

Name.....

Position.....

Signed..... **Date**.....