

Terms of business for the supply of Permanent Staff

1. Definitions:

Throughout this document, the following definitions apply:

"**Company**": Rubicor CRS Pty Ltd ABN 57 120 804 140.

"**Client**": any person or *body*, who, directly, or through its officers, receives a Proposal and Resume from the Company.

"**Candidate**": the person named in the Proposal and any other person introduced to the Client by or through the Company or its representatives, as a person for the Client to consider as an employee of the Client in respect of the Position (or any other position) with the Company.

"**Services**": the Company providing to the Client a Resume of a Candidate or Candidates and such other assistance as may be provided by the Company by agreement with the Client with respect to the introduction of a Candidate or Candidates to the Client.

"**Resume**": information relating to the Candidate including but not limited to the Candidate's name, academic record, employment history and other information about the Candidate.

"**Annual Salary Package**": the amount equal to the amount payable to a Candidate for one (1) year's employment and when the employment is for less than one (1) year, the amount which would be payable if the employment was for one (1) year.

"**Associate of the Client**": where the Client is a *body*, a *related entity* or *Associated Person* of the Client and where the client is a natural person, an *Associated Person* of that natural person.

"**GST**": has the meaning given in the GST Law; "GST Law" means the legislation entitled A New Tax System (Goods and Services Tax) Act 1999.

"**Fee**": the fees calculated under these Terms payable by the Client to the Company for the Services provided.

"**Position**": the 'Position' described in the Proposal.

"**Proposal**": the Proposal accompanying these Terms.

2. Provisions of Services:

The Company agrees to provide the Services in accordance with the Proposal and these Terms.

3. Suitability of Candidates / Liability of Company:

The Company will endeavour to provide accurate details of the Candidate, but will not be liable for any loss, expense, damage or delay in connection with the introduction of the Candidate or the Candidate's employment or acts or omissions of the Candidate whether caused by negligence or otherwise. The Client agrees it will satisfy itself as to the fitness and suitability of the Candidate for the Position and will conduct such reference checks and medical examinations, as may be necessary and will verify the Candidate's qualifications and conduct interviews as the Client sees fit. The Client will base any decision to employ any Candidate wholly on its own enquiries and judgement. The Client accepts that a Candidate may provide untruthful information concerning him or herself, and there is no warranty by The Company as to the truth of any information supplied to the Client concerning the Candidate by the Candidate or by The Company.

4. Notification of Employment:

The date on which the Client or Associate of the Client agrees to employ the Candidate is the "Employment Date". The Client agrees that on the Employment Date it will inform the Company in writing of the Employment Date and the Annual Salary Package payable to the Candidate.

5. Fees Payable:

The Fee becomes payable by the Client to the Company on the Employment Date and the invoice in respect of the Fee is payable within 14 days of the date of the relevant invoice. The Fee is exclusive of GST. The Company will charge the Client GST at the applicable rate. GST is due and payable at the same time as the Fee. The Fee, is that amount, regardless of whether the Candidate is employed on a part time or full time basis which is equal to the greater of:

- \$5,000; and
- that amount equal to the percentage (specified in point 7 below) of the Annual Salary Package of the Candidate (The Annual Salary Package also includes the value of the Additional Benefits) as described and calculated in accordance with these Terms:

6. Exclusive and Non Exclusive Services:

Where the Client retains the Company to provide the Services on an "Exclusive Basis" no other person will be retained by the Client to provide services similar to the Services until fourteen (14) days after the date of the issue of the first Proposal and Resume by the Company to the Client in respect of the Position. After the expiration of that time the Company will be retained on a Non-Exclusive Basis. If the Company is not retained on an Exclusive Basis the Non-Exclusive Rates will apply.

7. Fees :

The Fees are as follows: Where the Company is engaged on:

1) a Non-Exclusive Basis:

Where the Annual Salary Package:

- is in the range: \$0 – \$59,999 The Fee payable = 17% of the Annual Salary Package
- is in the range: \$60,000 – \$99,999 The Fee payable = 21% of the Annual Salary Package; and
- is or exceeds: \$100,000+ The Fee payable = 25% of the Annual Salary Package

2) an Exclusive Basis:

Where the Annual Salary Package:

- is in the range: \$0 – \$59,999 The Fee payable = 15% of the Annual Salary Package
- is in the range: \$60,000 - \$99,999 The Fee payable = 18% of the Annual Salary Package
- is or exceeds \$100,000 The Fee payable = 21% of the Annual Salary Package

8. Additional Benefits:

For the purpose of calculating the Annual Salary Package of a Candidate motor vehicles provided by the Client to the Candidate will each be valued at \$15,000 per annum (or as otherwise agreed) and the value of those motor vehicles and the value of all allowances, employer contributions to superannuation funds, subsidised loans and any other benefits must be taken into account in calculating the Annual Salary Package.

9. Particular Provisions concerning Placements where Salary \$100,000 or more:

Where the Company is engaged to seek a Candidate for a Position for which the Annual Salary Package is \$100,000 or more, the Company may calculate the estimated Fees based on the likely Annual Salary Package of the Candidate. The Company may issue invoices as follows:

- for **1/3** of the estimated Fees on the date the Company is engaged. Payment of the invoice must be made before the Company commences any database searching and/or placement of advertising. This payment is not refundable;
- for **1/3** of the estimated Fees on the date the Company submits a Proposal and Resume of a Candidate (or of a series of Candidates). This payment is not refundable; and
- for the balance of the Fee (determined under these Terms less the amounts charged under the two prior invoices) which becomes payable on the Employment Date. This invoice is payable within (14) days of the date of invoice.

10. GST:

All fees payable under these Terms are exclusive of GST. All invoices of the Company will be Tax Invoices under the GST Law. In addition to the Fees payable by the Client, the Client must pay the Company the GST specified in the Tax Invoice.

11. The Company's Guarantee:

In the event a Candidate leaves the Client's employ within 90 days of the commencement of the employment ("Commencement Date") for any reason other than as a consequence of retrenchment, harassment, discrimination, redundancy, or a change in the job description, the Company will at the request of the Client use its best endeavours to seek a replacement person within 30 days of the date the Client notifies the Company of the date on which the Candidate ceased to be employed by the Client (the "Cessation Date"). This guarantee is valid for one replacement only and is subject to the following conditions:

- the Client must notify the Company of the Cessation Date within 5 days of it occurring;
- the Client must use the Company exclusively for the purpose of seeking a replacement person for a minimum period of 30 days from the date of notification (the "Further Search Period");
- the Client must cooperate with the Company in process of seeking the replacement during the Further Search Period.
- each invoice in respect of the Candidate having been paid within 14 days of the date of the invoice.

The provisions of this Guarantee will be satisfied by the replacement person being employed by the Client. If the Client does not request the Company to seek a replacement or conditions (a), (b), (c) and (d) are not satisfied, the Fees payable under this Agreement shall not be refundable and if unpaid will nevertheless be payable.

12. Replacement Conditions:

In the event that the Company is requested to, and is unable to (after working on the role exclusively for 30 days), provide the replacement within the Further Search Period the Client will be refunded fees paid, calculated on the following pro-rata basis:

If the Cessation Date occurs:

- within 30 days of the Commencement Date = 100% refund;
- after 30 but within 60 days of the Commencement Date = 50% refund;
- after 60 but within 90 days of the Commencement Date = 25% refund;
- more than 90 days after the Commencement Date no refund will be made.

13. Default & Consequences of Default

Interest on overdue invoices shall accrue from the date when payment becomes due until the date of payment at a rate of 2% per calendar month and shall accrue at such a rate after as well as before any judgement. In addition to interest, if any account remains unpaid for one month or more then a further amount equal to the greater of \$50.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable by the Client.

If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company with respect to all the Company's costs and disbursements occasioned by the default, including legal cost on a solicitor and own client basis, all of the Company's costs incurred in the retainer of a commercial agent and/or collections agent, and all of the Company's internal costs.

Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation under these Terms of Business (including but not limited to those relating to payment), the Company may suspend or terminate the supply of services to the Client and any of its other obligations under these Terms of Business, and the Company will not be liable to the Client for any loss or damage the Client suffers by reason of that suspension.

The Client is not entitled to claim any set-off against monies owing to the Company under these Terms of Business.

Under no circumstances (including but not limited to circumstances of the Company's negligence) shall any liability of the Company to the Client under these Terms of Business with respect to a Candidate be greater than 40 times the Hourly Charge with respect to that Candidate.

14. Referral of Candidate:

If the Company introduces a Candidate to the Client who subsequently refers that Candidate to any other person, resulting in the employment of the Candidate by that other person, the Client will be liable for Fees (as calculated under these Terms) as if the Client had employed that Candidate, without prejudice to any liability of the Client to the Company for any breach of these Terms and to any liability of the person who employs the Candidate.

15. Subsequent Employment:

The employment by the Client of any Candidate introduced by the Company, within 12 months of the date of the submission of any Proposal in respect of the Candidate renders the Client liable to pay the Company Fees in accordance with these Terms.

16. Impact of Legislation and Jurisdiction:

Notwithstanding any other provision of these Terms This agreement is governed by the law of New South Wales, and The Company and the Client submit to the non-exclusive jurisdiction of the courts of that State :

- these Terms do not exclude, restrict or modify in any manner whatsoever:
 - the rights conferred upon consumers and others by legislation that cannot be lawfully excluded, restricted or modified;
 - the rights and remedies conferred on a consumer or others by any such legislation;
 - the exercise of any such rights or remedies by a consumer or others; or
 - any mandatory condition or warranty imposed by or implied by, any legislation in favour of a consumer or others which cannot be excluded by contract;
- the Trade Practices Act (Cth), and other statutes (together and separately "Legislation") may impose warranties, terms and conditions or impose obligations on the Company which cannot, or can only to a limited extent, be excluded, restricted or modified and further agrees, to the extent permitted by law:

- (i) any warranties (whether express or implied under the Legislation), are to the extent possible, excluded;
- (ii) such of these conditions that exclude or limit the Company's liability shall apply; and
- (iii) subject to (i) and (ii) these conditions shall be construed subject to the Legislation and any inconsistency between the Legislation and these Terms shall be read down to conform to the Legislation.

17. Company's Obligations concerning Candidates:

The Client agrees that unless and until it employs the Candidate the Client:

- (i) it will not contact a Candidate other than through the Company; and
- (ii) it will not disclose any information in relation to a Candidate or the Company without the written consent of the Company
- (iii) that it will not terminate a Candidate's employment without good cause

18. Acceptance of Terms:

(a) The Proposal and these Terms constitute the entire agreement between the Client and the Company and will only be varied by a document in writing signed

- (i) on behalf of the Client; and
- (ii) by a director of the Company.

(b) The client may accept the terms and conditions of this agreement either

- (i) in writing, by signing and returning a copy of these Terms and Conditions of business to the Company
- (ii) by its conduct, by meeting with the Candidate(s) or passing on the Candidate's personal information to a third party

19. Client's Responsibilities in Relation to Working Conditions:

It is the responsibility of the client to 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 a Candidate, which insurance shall also indemnify the Company against any such claims.

20. Employment of Company Consultant

The Client agrees that if the Client, or a third party at the instigation of the Client, employs any Company Consultant with a period of 12 months after the Client has last had dealings with that Consultant for the purposes of this agreement, then the Client will pay a fee to the Company of \$20000 plus GST. For the purposes of this clause, a "Consultant" is any person who was employed by the Company, or provided services to the Company as a temporary employee or through a service company, at any time since the commencement of this agreement as a recruiter or in a like position, whether or not the Consultant had ceased to be employed or provide services to the Company at the time of employment by the Client or the third party

21. Events Beyond Control:

The Company will not be liable for any non-performance of its obligations under the Proposal or these Terms, or the non-performance of the work by the Candidate where its non-performance (or the non-performance of any work by any Candidate) is a consequence of events beyond the control of the Company and/or the Candidate.

22. Interpretation:

Words in *italics* have the meanings set out in the Corporations Act 2001 Cth. In these Terms unless the contrary is expressly provided:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes each other gender;
- (c) headings are for convenience only and do not affect interpretation;
- (d) reference to legislation or a provision of any legislation includes modifications or re-enactments of the legislation, or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation; and
- (e) an expression not otherwise defined has the same meaning as in the Interpretation Act 1987 (NSW).

I have read and agree to the above terms

Date: _____

Company Name: _____

Signed: _____

Name Printed: _____

Title: _____