

Terms of business for the supply of Temporary Staff

1. Definitions:

Throughout this document the following definitions apply:

"Agreed Rate": the "hourly rate" specified in the Proposal or such other rate as may be agreed between the parties and the Agreed Rate is exclusive of GST.

"Assignment Period": the period during which the candidate is engaged in work for the Client.

"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.

"Candidate": any person introduced to the Client by or through the Company or its representatives, as a person for the Client to have perform work in the Client's business.

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

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

"Annual Salary Package": the amount equal to the amount payable to a Candidate if the Candidate was employed for one (1) year.

"Fees": the fees payable under point 4 of the Terms.

"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.

"Placement Fee": the fee calculated under these Terms payable by the Client to the Company.

"Proposal": the Proposal accompanying these Terms

"Services": the introduction of persons to, and the provision of the services of persons to undertake work for, the Client and other services as agreed between the parties from time to time.

"Terms": means these Terms of Business.

2. Provisions of Services:

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

3. Suitability of Applicants:

Every reasonable effort will be made to ensure the suitability of Candidates introduced to the Client and provided to the Client. The Client accepts that a Candidate may provide untruthful information, 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. The Company is in no way liable for any decision by the Client to place a Candidate in a position, even if the Client later considers the Candidate to be unsuitable for that position. Any Candidate engaged by the Client to do work in the Client's business is for the purpose of these Terms, the **"Temporary"** and must be subject to the direction, supervision and control of the Client for the Assignment Period. When the Client communicates the Client's decision to accept and engage a Temporary the Company will issue a written confirmation of that fact. The terms of that confirmation will be binding on the Client unless the Client objects to those terms before the end of the working day following the date the confirmation is received. .

4. 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.

The Client will provide the Temporary with such protection from injury and exposure to any risk as may be required and with such amenities as are required to be provided by any legislation for the protection and safety of workers engaged in the same or similar class of work. The Client acknowledges and agrees that the Company will not be responsible for any error, loss, damage, delay or expense resulting from any action or omission of the Temporary when engaged in performing work for the Client

5. Fees Payable:

- The Client agrees to pay the Company the Agreed Rate for each hour (or part thereof) during which the Temporary is engaged in work for the Client with a minimum charge (irrespective of hours worked) calculated at the rate of four (4) hours per day. Unless otherwise indicated the Temporary is paid in accordance with the Clerical & Administrative Employees in Temporary Employment Services (State) Award (the "Award"). The Client acknowledges and agrees it is bound by the terms and provisions of the relevant award if an employee works in excess of 8 hours per day or more than 38 hours in a week in regard to overtime, meal or any other allowances.
- The Client shall countersign each timesheet containing the hours worked by the Temporary presented for that purpose by a Temporary provided the timesheet accurately records the hours worked.
- When a timesheet has been signed by the Client that timesheet will constitute the agreement of the Client as to the hours worked by the Temporary (recorded on the timesheet) and the Client's satisfaction with the performance of the Temporary. If the Client has any dispute in respect of a timesheet or the quality of the performance of the work, the Client shall submit details of the dispute to the Company. If a Client declines to sign a timesheet which is submitted to it by a Temporary, or does not give details of the dispute within four (4) days of the day it is submitted, the Client will be deemed to agree that the timesheet is correct and the quality of the work is satisfactory.
- The Company will submit a Tax Invoice to the Client weekly (or if the Assignment Period is less than a week, at the conclusion of the Assignment Period) for each Temporary provided. Each Tax Invoice is payable within 7 working days of the date of the invoice.
- Should the Client, at any time within twelve months of the cessation of work for the Client under these Terms by a Temporary, wish to again obtain the services of that Temporary, the Client agrees to obtain the services of the Temporary only through The Company. Should such Temporary be employed directly by the Client, or the services of the Temporary be obtained by agreement with a person or entity other than The Company then the Client agrees to pay to The Company a placement fee as set out later in these Terms.

6. Performance Guarantee ("Guarantee"):

The Company guarantees the Temporary will work to a standard, commensurate with the role in the relevant industry provided the Temporary has received appropriate instruction and supervision from the Client. In the event the Client considers the work of a Temporary is unsatisfactory the Client must advise the Company immediately. If the Client advises the Company the work is unsatisfactory on the day the Temporary first undertakes work for the Client, the Company will not invoice the Client provided the provision of the Temporary's services is discontinued on or before the time the Client advises the Company of the unsatisfactory work.

7. Temporary to Permanent Status:

- The Client must not offer employment to any Candidate or Temporary (each a **"CR Person"**) nor directly or indirectly engage or employ the services of any CR Person during the currency of any Assignment Period or within twelve months of the conclusion of the Assignment Period.
- Should the Client employ any CR Person during the currency of any Assignment Period or within twelve months of the end of any Assignment Period a Placement Fee must be paid by the Client to the Company.
- The employment of any CR Person by the Client or Associate of the Client shall effect a termination of the engagement of the Company in respect of its obligation to provide the services of that CR Person under these Terms.

8. Placement 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 7 days of the date of the relevant invoice.
- The Placement Fee, is that amount, (regardless of whether the CR Person 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 the clause dealing with the Calculation of Placement Fees) of the Annual Salary Package of the CR Person (The Annual Salary Package above includes the value of the Additional Benefits as described and calculated in accordance with these Terms):

9. 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.

10. GST:

The Agreed Rate and any Placement Fee is exclusive of GST. The Company will charge the Client GST at the applicable rate. GST is due and payable at the time the invoice is payable.

11. Calculation of Placement Fees:

Where the Annual Salary Package The Fees are as follows:

- is in the range of \$0 – \$59,999; The Fee payable = 15% of the Annual Salary Package;
- is in the range of \$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.

12. Additional Benefits:

For the purpose of calculating the Annual Salary Package of a CR Person motor vehicles provided by the Client to the CR Person 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 will be taken into account in calculating the Annual Salary Package.

At the Company's election, in lieu of claiming a fee based upon the Candidate's Salary as set out above, the Company may instead charge the Client a fee based upon the Candidate's Deemed Salary, which fee is to be determined in accordance with the above, save that "Deemed Salary" shall be substituted for "Salary". The Deemed Salary of a candidate is an amount equal to 1800 times the Candidate's most recent hourly charge rate (inclusive of GST), being the most recent hourly rate previously payable by the Client (or such other person who had last engaged the Temporary under contract with The Company Name.

13. Reduction of Placement Fees:

If a Temporary, who is engaged by the Client for in excess of the specified number of consecutive working days set out below, is employed by the Client in circumstances where a Placement Fee is payable, the Company will reduce the Placement Fees as follows:

If the Temporary has been engaged:

- for in excess of 90, and up to 180, consecutive working days the Company will reduce the Placement Fee by 10%; and
- for more than 180 days consecutive working days, the Company will reduce the Fee by 25%.

14. Extinguishment of Guarantee:

If the Company offers a permanent position to a Temporary, the Guarantee ceases to have effect on and from the date of the offer.

15. Referral of Candidates:

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 Placement Fees 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.

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

- (iii) 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;
- (b) 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
 - (iv) 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. 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

18. 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 within 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.

19. 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 Temporary where its non-performance (or the non-performance of any work by any Temporary) is a consequence of events beyond the control of the Company and/or the Temporary

20. 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:	_____