

## TERMS OF BUSINESS

These are the Terms of Business for the supply of services by PCA People ("PCA") to the Client.

These terms must be read in conjunction with any specific job proposal agreed in writing between the parties. The terms of a specific job proposal shall override these terms to the extent of any inconsistency.

### 1. GENERAL TERMS

#### 1.1. Supply of the Services

- (a) PCA agrees to provide the Services to the Client in relation to the appointment or engagement of Permanent workers, Contractors or Temporary workers as requested by the Client from time to time.
- (b) Unless expressly agreed that PCA will be a Contingent Agent, the Client will not engage any other agent or provider to provide the Services during the course of this Agreement. PCA will be the Client's Exclusive Agent in that regard.
- (c) Clause 1.1(b) does not apply in circumstances where an exclusive arrangement is contrary to any accepted recruitment policies of any government department or agency, or if the Client has a Contingency Arrangement with PCA.

#### 1.2. Term of the Agreement

This Agreement will continue in respect of completed provision of the Services, or this Agreement is terminated in accordance with its terms.

#### 1.3. Acceptance of Terms of Business

These terms will be deemed to have been accepted by the Client by:

- (a) Signing these terms; and/or
- (b) Electronic acceptance of these terms: and/or
- (c) Accepting the resume of a Candidate who has been introduced to the Client by PCA; and/or
- (d) Interviewing a Candidate introduced by PCA at any time in the 12 months prior to the engagement of that Candidate; and/or
- (e) Engaging a Candidate introduced by PCA at any time in the 12 months following the introduction.

#### 1.4. Termination of Agreement

- (a) This Agreement may be terminated by either party giving the other thirty (30) days notice in writing.
- (b) PCA remains entitled to payment for the Fees earned as a result of the delivery on any agreed milestone.

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### 1.5. General duties of PCA

- (a) PCA agrees to use reasonable care and skill in the provision of Services. PCA will endeavour to provide accurate background details of the qualifications and experience of Candidates. The details provided are based on information made available to PCA by Candidates and/or their referees. Therefore, PCA does not accept any responsibility for errors, omissions or incorrect conclusions.
- (b) Whilst PCA makes every effort to ensure suitability of Candidates, PCA does not warrant the skills or qualities of any Candidates. The Client will need to satisfy itself that any medical, criminal, privacy, security or other qualification has been met by the Candidate. The Replacement Guarantee is the limit of PCA's liability relating to the Client hiring a Candidate introduced by PCA.

### 1.6. General Duties of Client

The Client will ensure that:

- (a) The provisions of any relevant Industrial Award or agreement are adhered to;
- (b) The provisions of any relevant legislation are adhered to including but not limited to workplace relations legislation, occupational health and safety legislation, tax legislation, workers compensation legislation; anti discrimination legislation and any other legislation that affects either the Client or the Candidate;
- (c) It has in place, and keeps current for the duration of the engagement of any Candidate, all relevant insurances including workers compensation, public liability and professional indemnity;
- (d) All Candidates are supervised and/or directed appropriately at all times;
- (e) PCA is allowed access to any worksite at which a Candidate is engaged;
- (f) It notifies PCA of the engagement of any Candidate who is engaged within 12 months of being introduced by PCA to the Client.

### 1.7. Additional duties of Client in respect of Temporary workers

During the period Temporary worker(s) are supplied to the Client, the Client will:

- (a) Engage the Temporary worker for a minimum of three (3) hours on any given day; and
- (b) Approve and submit to PCA correctly completed timesheets in a timely manner. By approving a timesheet the Client is verifying the hours are correct, that the work has been performed in a satisfactory manner, and that any hours worked at penalty rates are approved for payment; and
- (c) Notify PCA of any material change in the circumstances of the Temporary Worker(s) (such as change of duties or work location), or of any incident or hazard that may affect the worker.

### 1.8. Additional duties of Client in respect of Permanent workers and Contractors

During the period Permanent workers or Contractors are supplied to the Client, the Client will:

- (a) Remunerate the Candidate for work performed in accordance with the contract under which the Candidate is engaged;

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- (b) At the request of PCA, make available for inspection by PCA the contract under which the Candidate is engaged;
- (c) Pay in respect of the Candidate all taxes, superannuation, insurance premiums, or any other costs or obligations imposed by law.

### 1.9. Confidential information

- (a) It is the Client's sole responsibility to protect its intellectual property and confidential information.
- (b) Written and verbal information provided by PCA to the Client should be treated as confidential and should not be disclosed to any other party without the written consent of PCA.
- (c) The Client agrees to treat all Candidate information in the strictest confidence and to take every reasonable precaution not to jeopardise the employment of any Candidate seeking placement with the Client. In particular the Client agrees to refrain from conducting reference checks without first discussing references for the Candidate with PCA.

### 1.10. Receipt of Candidate Information

- (a) In relation to Candidate Information disclosed to the Client by PCA under this Agreement, the Client must:
  - (i) Not use, disclose, store, transfer or handle the information except in accordance with the Privacy Act;
  - (ii) Take all reasonable steps to ensure that the information is protected from misuse, loss, unauthorised access, modification or disclosure;
  - (iii) Take all reasonable steps to destroy or permanently de-identify the information when it is no longer needed for a purpose connected with this Agreement; and
  - (iv) Only use the information for a purpose connected with this Agreement.
- (b) The Client indemnifies PCA against any cost, liability, damage or loss incurred or suffered by PCA arising directly or indirectly or in connection with a breach of clause 1.10(a) of this Agreement.

### 1.11. Liability

- (a) To the extent permitted by law, PCA will not be liable to the Client for any expense, delay, loss or damage (including without limitation loss of profits, loss of opportunity or business interruption) suffered by the Client and arising from failure or inability to provide Services as required by the Client.
- (b) PCA will not be liable to the Client for any loss, expense, delay or damage arising from an act, error, misconduct or omission by a Candidate whether negligent, wilful or otherwise.
- (c) PCA will not be liable to any person in connection with the provision of the Services and the Client will indemnify and keep indemnified PCA in respect of any loss or damage suffered by any third party in connection with the provision of the Services in accordance with this Agreement.

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### **2. FEES**

#### **2.1. Fees – Generally**

- (a) PCA will charge a fee for the provision of the Services (“Fees”). Fees will apply to any Placement made within 12 months of introduction of the Candidate to the Client, or within 12 months of the Candidate last being engaged by the Client.
- (b) All Fees are calculated with reference to a Total Remuneration Package.
- (c) If PCA is the Client’s Exclusive Agent, PCA is entitled to Fees for any Placement or the placement of any other individual introduced or placed directly by the Client or by any other agency during the term of this Agreement, whether or not those individuals are Candidates.
  - (i) If PCA is the Exclusive Agent, PCA will render invoices at its discretion from time to time. Unless otherwise advised, invoices will be issued in the following manner:
    - On commencement of the recruitment assignment, an invoice will be issued for one third of the Fees;
    - On presentation of Candidates, an invoice will be issued for one third of the Fees; and
    - On acceptance by the Candidate of the offer of a position, an invoice will be issued for the final third of the Fees.
- (d) If PCA is one of the Client’s Contingent Agents PCA is only entitled to Fees for individuals placed who are Candidates supplied by PCA, in which case Fees shall be rendered by PCA in accordance with any agreement between the parties or in accordance with the Fees referred to in clause 2.5 below.
  - (i) If PCA is the Contingent Agent, PCA will render invoices at the time of acceptance by the Candidate of the Client’s offer of employment.
- (e) Unless otherwise provided in this Agreement, all Fees are payable within 14 days of invoice by PCA. A Client may seek PCA’s consent to pay Fees on a monthly basis for Contractors or Temporary workers, provided that such consent is sought prior to the Placement. If PCA has agreed to such an arrangement, a monthly administration surcharge of 10% of the Fees will be charged in respect of the arrangement.
- (f) If the Client is late or defaults in payment, PCA may withhold without penalty any services until payment is made in full by the Client. PCA may also apply a service charge on late payments at the rate of 1.5% per month, compounded monthly.
- (g) No deduction from Fees will be allowed by way of set off, counterclaim or otherwise without PCA's prior written consent.
- (h) PCA reserves the right to charge an administration fee of \$1,000 plus GST in the event of an assignment being withdrawn by the Client. This is in instances such as a job order is commenced and significant work performed, and through no fault of PCA, the role is withdrawn before any fees are collected. The administration fee will be invoiced and is payable within seven (7) days.
- (i) The Guarantee Period and Replacement Guarantee are conditional upon the Fees being paid in accordance with this Agreement.

#### **2.2. Custom Advertising for Candidates**

- (a) Unless otherwise agreed, if PCA has to arrange Custom Advertising in order to perform the Services, advertising costs will be charged in addition to the Fees and will be invoiced at the

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time of lodgement of the advertisement and will be payable irrespective of whether a placement is made.

- (b) All advertising conducted for the purpose of attracting Candidates will be discussed in detail (including costs) with the Client before committing on the Client's behalf, and no advertisement will be placed without Client approval.

### 2.3. Psychological Testing of Candidates

- (a) Unless otherwise agreed, if PCA is requested by the Client to undertake psychological testing of Candidates, the costs of such testing will be charged in addition to the Fees and will be invoiced at the time of testing. The costs of such testing are payable irrespective of whether a Placement is made or the specific Candidate tested is successful in their application.
- (b) Psychological testing will be undertaken only at the Client's request and may cover aptitude, personality and work preferences.
- (c) The cost of testing will vary according to the type of appraisal required. The Client will be advised of the anticipated cost prior to the commencement of testing.

### 2.4. Other Services

Other Services including Police Checks and Security Checks may be affected at the Client's request. These costs are charged in addition to the Fees, and will be invoiced when incurred by PCA. They are payable irrespective of whether a Placement is made.

### 2.5. Calculation of Fees for Permanent workers

- (a) The fees payable to PCA by the Client in relation to a permanent, full time or part time placement are calculated as a percentage of the full time gross Total Remuneration Package attributable to the position. The Default Fee is shown in 2.5(d) below.
  - (i) A minimum fee of \$2,500 plus GST will apply for any Placement of a Permanent worker irrespective of whether the Placement involves full-time or part-time work.
- (b) The Client and PCA may agree on a Fixed Price Fee for the provision of Permanent workers within a salary package range. This Fixed Price Fee must be agreed in writing; otherwise the Default Fee will apply.
- (c) The Client and PCA may agree on a Percentage Fee calculated on the Total Remuneration Package estimated for the first year for the provision of Permanent workers within a salary package range. This Percentage Fee must be agreed in writing; otherwise the Default Fee will apply.
- (d) The Default Fee is as follows:

Total Remuneration Package <i>(refer clause 2.5(a))</i>	Fee percentage
Up to \$49,999	12.5% plus GST
Between \$50,000 - \$79,999	15% plus GST
Between \$80,000 and \$109,000	18% plus GST
Over \$109,000	22.5% plus GST

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### 2.6. Calculation of Fees for Contractors

- (a) Fees for Contractors are calculated on the Total Remuneration Package, pro rata on a monthly basis for contracts under 12 months. The default fee is shown in clause 2.5(d) above.
  - (i) A minimum fee of \$550 plus GST will apply for any Placement of a Contractor irrespective of whether the Placement involves full-time or part-time work.
- (b) If the contract is renewed for any additional period an additional fee is payable by the Client to PCA, calculated pro rata to a maximum period of twelve months.
- (c) The Client and PCA may agree on a Fixed Price Fee for the provision of Contractors within a salary package range. This Fixed Price Fee must be agreed in writing; otherwise the Default Fee will apply.
- (d) The Client and PCA may agree on a Percentage Fee calculated on the Total Remuneration Package estimated for the first year for the provision of Contractors within a salary package range. This Percentage Fee must be agreed in writing; otherwise the Default Fee (clause 2.5(d) above) will apply.
- (e) Where the Candidate returns to a Client within 12 months (after a period of absence following a Contract), a further Default Fee is payable by the Client to PCA, unless a different fee has been agreed in writing by PCA and the Client.

### 2.7. Fees – Temporary Staff

- (a) Fees rendered by PCA to the Client for Temporary Staff include:
  - (i) The candidate's hourly pay, superannuation, all leave entitlements such as personal leave, compassionate leave, annual leave, public holidays, long service leave etc;
  - (ii) Workers compensation, public liability, PCA's professional indemnity insurance; and
  - (iii) Employee related taxes including PAYG and Payroll Tax.
- (b) PCA will invoice the Client for Fees on a weekly basis.
- (c) Fees will be payable by the Client only for actual hours worked by Temporary workers as indicated in the weekly time sheet provided to PCA in accordance with clauses 1.7(a) and 1.7(b).
- (d) The Fees will be agreed between PCA and the Client before a Candidate commences a placement with the Client.
- (e) In the event of:
  - (i) A change to relevant legislation (including, but not limited to workers compensation legislation, superannuation legislation, taxation legislation, occupational health and safety legislation); or
  - (ii) A change to an Industrial Award covering a Candidate;
  - (iii) A rise in relevant insurance premiums; or
  - (iv) A change in the hourly pay rate of the Candidate caused by a change in the job duties of the Candidate or other causes

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- (v) Any of those events increases the cost to PCA of providing the Services in respect of a Temporary worker, PCA may change the Fees and apply such change, provided that the Client is notified in writing as soon as is reasonably practicable after PCA becomes aware of the event.

### 2.8. Fees – Transfer from Temporary or Contractor to Permanent

- (a) When the Client or a third party introduced by the Client, directly or indirectly employs as a Permanent worker (whether part time or full-time) a worker initially classified under this Agreement as a Temporary worker or Contractor (or one whose assignment was completed within the previous 12 months), a Permanent Placement Fee applies.
- (b) In the event that the Candidate is hired as a Permanent worker:
  - (i) While working as a Contractor, or within 12 months of completing his/her engagement as a Contractor, or
  - (ii) While working as a Temporary worker, or within 12 months of completing the Temporary assignment,

the Fees are calculated on a pro-rata basis based on  $(\text{the Default Fee}/52) \times (52 - \text{the number of weeks worked by the Candidate for the Client already})$  unless previously agreed between the Client and PCA in writing.

- (c) The permanent placement fee under this clause 2.8 will be invoiced on acceptance of the position by the Candidate.

## 3. REPLACEMENT GUARANTEE

- (a) Subject to the Fees having been paid in full within the terms of payment and clause 3(b) below, if the client is not satisfied with the original Placement during the Guarantee Period, PCA will endeavour to find a replacement Candidate for the position without charging any additional fees.
- (b) There is no Replacement Guarantee for:
  - (i) Candidates hired under the Perfect Start Program; or
  - (ii) A position that is already occupied by a Candidate who has been engaged as a Replacement Worker.
- (c) The Guarantee Period is from the date when the Candidate first started working for the Client:
  - (i) To one hundred and twenty (120) days after this date for the Exclusive Agent; or
  - (ii) To ninety (90) days after this date for the Contingent Agent.
- (d) In the event of the Candidate leaving his or her position with the Client within the Guarantee Period (otherwise than as a result of the unreasonable or illegal conduct of the Client), PCA will endeavour to find a suitable replacement for the original Candidate at no additional fee (subject to clause 3(e) below), provided that:

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- (i) The Fees have been paid in full within the terms of payment;
  - (ii) The request to replace the Candidate is given on an exclusive basis to PCA for a period not less than six (6) weeks;
  - (iii) PCA has been advised in writing of the reason for the termination within the Guarantee Period; and
  - (iv) The termination or release has not been as a result of a material change in the job description, or a company restructure, redundancy, breach of relevant industrial law or a decision not to refill the position.
- (e) Any additional advertising costs incurred in finding the Replacement Worker are borne by the Client.
- (f) In the event that a Replacement Worker is sought by the Client and:
- (i) The Client has not been unreasonable in refusing to accept suitable Replacement Workers put forward by PCA; and
  - (ii) PCA is unable to supply a suitable Replacement Worker within a reasonable period of not less than six (6) weeks;

50% of the Fees will be credited to the Client's account. This credit is valid for a period of six (6) months from the date the amount is credited to the Client's account and can be offset against future Permanent Placement Fees during this period.

## 4. DEFINITIONS

- (a) **Agreement** means this Terms of Business agreement, as amended from time to time.
- (b) **Candidate** means any individual introduced to the Client by a PCA employee or agent, or indirectly as a result of any activity carried out by PCA for or on behalf of the Client
- (c) **Candidate Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in writing or spoken about, a Candidate whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- (d) **Client** means:
  - (i) The business or other entity to whom this document is sent or provided and includes any subsidiary, affiliate, related company, group company, section or person; or
  - (ii) in the case of the government the Client is the division, branch, department, agency or enterprise (as the case may be) who is seeking assistance to engage a Candidate;
  - (iii) for the specific purposes of clauses 1.6(f) and 2.1(a) in the case of government, the Client shall include related departments or divisions within the Branch or any other area within the larger organisation to whom the Candidate, or the Candidates details are referred by the Client.
- (e) **Commencement Date** means the date on which a particular Candidate commences placement with a Client.
- (f) **Contingent Agent** means that the Client may appoint other recruitment agents or source candidates directly during the course of this agreement.
- (g) **Contractor** means a Candidate engaged on a non-ongoing basis by a Client, paid through the books of the Client.
- (h) **Custom Advertising** means any specific advertising outside of the electronic job boards or print media normally used by PCA.
- (i) **Default Fee** means the fees set out in clause 2.5(d).

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- (j) **Exclusive Agent:** PCA will be the exclusive agent for the Client for a period of six (6) weeks from the commencement of any agreement, unless the parties have expressly agreed that PCA is a Contingent Agent.
- (k) **Fixed Price Fee** means a set fee agreed between the Client and PCA in respect of the Placement of Permanent workers or Contractors within a designated annual salary package bracket.
- (l) **Guarantee Period** means the period during which a Replacement Guarantee applies to any given Candidate in accordance with clause 3(c).
- (m) **Percentage Fee** means a fee agreed between the Client and PCA which represents a percentage of the total salary package offered by the Client to Permanent workers or Contractors within a designated annual salary bracket.
- (n) **Perfect Start Program** means the short listing service provided by PCA with specific service delivery as detailed at <http://www.pcapeople.com/employers/productsandservices>
- (o) **Permanent** means a Candidate engaged by a Client under a contract of employment of indefinite duration, paid through the Client's payroll.
- (p) **Placement** occurs when the Candidate accepts an offer from the Client to perform the work requested by the Client.
- (q) **Privacy Act** means *Privacy Act 1988 (Cth)*.
- (r) **Replacement Guarantee** means the guarantee offered by PCA to the Client, as set out in clause 3.
- (s) **Replacement Worker** means a Candidate placed with the Client under the terms of a Replacement Guarantee.
- (t) **Temporary** means a Candidate working at a client site who is paid on a daily or hourly basis, and who is an employee or subcontractor of PCA and paid by PCA.
- (u) **Total Remuneration Package** includes the annual salary, superannuation, any company vehicle (deemed valued at \$15,000 p.a.), the annual value of all benefits such as laptops, mobile phones and reasonable anticipated commission or bonus/profit share in the first year of employment.
- (v) **Fees** means the total fee charged by PCA to a Client in respect of any given Placement.
- (w) **Services** means:
  - (i) In relation to Temporary staff the services will be as requested by the Client and will include candidate search, contacting and providing the Temporary staff to the Client, arranging for payment of remuneration, liaising with the Client in relation to the performance level of the Temporary staff and other employment costs or services as requested by the Client;
  - (ii) In relation to all other placements the Services will be as requested by the Client, and may include detailed discussions with the Client in relation to the position to be filled, advertising, vetting Candidates, review and assessment of resumes, contacting referees, undertaking background checks, performing and reporting on psychological review of Candidates and other employment costs or services as requested by the Client;
  - (iii) The work performed by any Temporary worker, Contractor, or Permanent worker placed by PCA does not form part of the Services provided by PCA.