

# TERMS OF BUSINESS RECRUITMENT



# TERMS OF BUSINESS

## Recruitment

### Parties

These Terms of Business are between Ablethorpe Recruitment and its Client each time Ablethorpe Recruitment provides recruitment services to a Client.

### Acceptance of Terms of Business

The Client agrees to be bound by these Terms of Business by accepting details of candidates, viewing candidates or employing or engaging candidates introduced by Ablethorpe Recruitment for a Permanent position offered by the Client, or for a Contract Assignment with the Client.

### Variation to Terms of Business

Any variation to the Terms of Business must be mutually agreed by both parties in writing.

### Definitions

**“Candidate”** means any person who has sought or obtained placement by Ablethorpe Recruitment in (i) Permanent or fixed term employment with a Client of Ablethorpe Recruitment, or (ii) by way of a contract assignment with a Client of Ablethorpe Recruitment.

**“Client”** means any person or body to which Ablethorpe Recruitment provides services and any Client Related Entity.

**“Client Related Entity”** means any entity connected with the Client including an entity with a common interest in an economic enterprise, for example, a related body corporate (as that term is defined in the Corporations Law) or a joint venture partner.

**“Contract Assignment”** means the provision of either an Independent Contractor, or an On-Hire Employee to carry out a contract assignment for a Client of Ablethorpe Recruitment.

**“Fixed Term”** means any person who has accepted or obtained placement by Ablethorpe Recruitment on a fixed term basis with a Client of Ablethorpe Recruitment. A Fixed Term Placement is employed by the Client and the Client takes responsibility for payroll, legislative requirements.

**“Ablethorpe Recruitment”** means Ablethorpe Recruitment Pty Ltd (ACN: 161 689 710) and any Ablethorpe Recruitment Related Entity.

**“Ablethorpe Recruitment Related Entity”** means any entity connected with Ablethorpe Recruitment by a common interest in an economic enterprise, for example, a related body corporate (as that term is defined in the Corporations Law) or a joint venture partner.

**“Independent Contractor”** means any entity engaged by Ablethorpe Recruitment to carry out a contract assignment with a Client of Ablethorpe Recruitment, who is engaged as an independent contractor and not as an On-Hire Employee. They are usually charged on an hourly, daily or project basis, which is dependent on the project and negotiated prior to commencement of each assignment or specific project.

**“Permanent”** means any person who has accepted or obtained Permanent employment with a Client.

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**“Privacy Laws”** means Privacy Act (Cth) 1988 (and amendments including the Privacy Amendment (Private Sector) Act 2000 (Cth).

**“Standard Fee Structure”** means the standard Ablethorpe Recruitment fee structure.

## 1. Fees

1.1. All fees are strictly payable within fourteen days of the invoice date.

### Fees for Contingent Assignments

- 1.2 The Fee for a Permanent Contingent Placement is as per the standard fee structure or as agreed between the parties set out in writing by Ablethorpe Recruitment and will be invoiced as soon as the offer has been made and accepted by the successful candidate.
- 1.3 The fee for a Fixed Term Placement is as per the standard fee structure or as agreed between the parties set out in writing by Ablethorpe Recruitment. Further fees will apply should the Candidate extend beyond the initial contract period (capping out at 12 months) or is made permanent in the same or another role with the Client or a Client Related Entity. The invoice will be issued as soon as the offer has been made and accepted by the successful candidate and further invoices will be issued as soon as the contract has been extended. Where the initial fixed term placement is in excess of 11 months, the placement will be treated as a permanent placement and full standard fee structure will apply.
- 1.4 Where the Candidate finishes a fixed term placement of less than 12 months and within a period of 12 months later is employed on a contract or permanent basis by the Client or a Client Related Entity, in the same or another role, full permanent placement fees will apply as per the standard fee structure.

### Fees for Permanent Assignments, Fixed Term Assignments and Buy-outs

- 1.5 Retained Assignment – Means the Client has requested an exclusive service to seek Candidates utilising one or a combination of sourcing channels such as advertised recruitment (print, internet) and the utilisation of search in specific industries or areas.
- 1.6 Search - Means the identification of potential Candidates by Ablethorpe Recruitment and/or the Client and the targeting and direct approach of such Candidates by Ablethorpe Recruitment.
- 1.7 The placement fee for a Retained Assignment or Search is as per the Standard Fee Structure and is payable as follows:
- a) One-third of the total estimated fee upon acceptance of the assignment;
  - b) One-third of the total estimated fee upon presentation of the shortlisted Candidates;
  - c) The balance is payable upon successful completion of the assignment, which occurs as soon as an offer has been made and accepted by the successful Candidate;
  - d) The Client must pay for all work performed by Ablethorpe Recruitment until the Client terminates the assignment.
- 1.8 Buy-Out – Where a Fixed Term, On-Hire Employee or Independent Contractor is transferred to a Permanent or other employment status (or contracts directly), with the Client or any other person or body to whom the Client has introduced the On-Hire Employee or Independent Contractor, the Client will be charged a fee based on the Standard Fee Structure.
- 1.9 Invoicing for the final amount in relation to completion of a Contingent Assignment, Fixed Term Placement or Buyout will take place as soon as the offer has been made and accepted by the successful Candidate.
- 1.10 Permanent placement, fixed term placements, and buy-out fees are calculated according to the Standard Fee Structure as a percentage of a Candidate's commencing annual remuneration package. The annual remuneration package includes base salary, employer superannuation contributions (including compulsory contributions), allowances, inducement payments, anticipated commission and bonus earnings and non-salary benefits such as provision of a motor vehicle. A car included in the package will be assessed at \$15,000. The value of all other non-salary benefits will be taken into account and agreed between Ablethorpe Recruitment and the Client. Where a Candidate is placed in a Permanent role on a part-time basis, the salary for calculating the placement fee will be on the basis of a full-time equivalent salary.

## 2. Permanent Placements - General Provisions

### Replacement Guarantee

- 2.1. If the requirements set out in this clause are met, Ablethorpe Recruitment shall extend a replacement guarantee for Candidates recruited and placed as Permanent employees with the Client.
- 2.2. This guarantee means that if the successful Candidate ceases employment with the Client within three months of commencement of such employment ("Guarantee Period"), and the requirements set forth below are met, Ablethorpe Recruitment will endeavor to find a replacement Candidate for the position without charging additional placement fees.
- 2.3. In circumstances where the fee is paid on acceptance of offer by the Candidate, and a Candidate withdraws their acceptance of an offer of employment from the Client prior to commencing such employment, the replacement guarantee may also apply, subject to the terms set out below.
- 2.4. The replacement guarantee only applies if:
  - a) all fees, charges and expenses owing by the Client in respect of the placement of the original Candidate have been paid in full in accordance with the payment terms set forth in these Terms of Business, and the Client has no other amounts outstanding to Ablethorpe Recruitment;
  - b) the request to replace the Candidate is given exclusively to Ablethorpe Recruitment;
  - c) Ablethorpe Recruitment is notified as soon as practicable that the Client wishes to invoke the guarantee, and in any event within the Guarantee Period;
  - d) the original job description and assignment specification does not alter; and
  - e) there is not an unreasonable delay by the Client in instructing Ablethorpe Recruitment to source the replacement Candidate.
- 2.5. The replacement guarantee does not apply:
  - a) If the Candidate's employment ceases for reasons beyond Ablethorpe Recruitment's control, such as redundancy, restructuring, economic circumstance, company closure, change of management, (including movement of partners to another firm or employer), or substantial change from the original job description; or
  - b) if the Candidate is engaged by the Client in an On-Hire Employee capacity or as a Fixed Term through Ablethorpe Recruitment immediately prior to the acceptance of a Permanent position with that client; or
  - c) to replacement Candidates provided under this Clause.
- 2.6. The replacement guarantee is not transferable to other placements or recruitment services, and the Client is not entitled to any credit or refund for replacement guarantees that the Client does not wish to pursue or which are undertaken by Ablethorpe Recruitment but not completed.
- 2.7. Any additional advertising costs are not included in this replacement guarantee.
- 2.8. If the remuneration package of the replacement Candidate increases from the original Candidate, the invoiced amount will be adjusted appropriately.

### Responsibilities After Permanent Placement

- 2.9. Once a Candidate is placed as an employee with a Client, the Client is the Candidate's employer and has sole responsibility for the employee. Ablethorpe Recruitment has no liability or obligations in respect of the Client's employee, including, without limitation, in respect of the termination of employment of the employee for any reason by the Client. This also applies to Fixed Term Placements.

## 3. Independent Contract Assignments

### General Provisions

- 3.1. Ablethorpe Recruitment can provide Independent Contractors as required by the Client to provide services in accordance with these Terms of Business and the verbal or written job specifications given by the Client for a particular Contract Assignment. If Ablethorpe Recruitment issues an assignment letter for a particular assignment, the provisions of that letter operate in conjunction with these Terms of Business. If the assignment letter differs from these Terms of Business, the assignment letter prevails (to the extent of that difference).

## 4. General Terms

### Introduction of Candidates

- 4.1. Ablethorpe Recruitment treats the introduction of Candidates and their details as strictly confidential, and therefore expects the Client to do the same.
- 4.2. If a Candidate or his or her details are introduced to or passed on to the Client (including the transfer of a candidate's details to the Client's database), and that introduction or transfer results in the Permanent employment or engagement on a contract basis of the Candidate, the Client must pay Ablethorpe Recruitment the appropriate fee in accordance with these Terms of Business and Ablethorpe Recruitment's Standard Fee Structure.
- 4.3. If a Candidate introduces another Candidate to the Client and that introduction results in Permanent employment or engagement on a contract basis of that Candidate, the Client must pay Ablethorpe Recruitment the appropriate fee in accordance with these Terms of Business and Ablethorpe Recruitment's Standard Fee Structure.

### Non-Solicitation of Ablethorpe Recruitment employees

- 4.4. The Client shall not solicit Ablethorpe Recruitment employees.
- 4.5. In the event that a Client places an Ablethorpe Recruitment employee in a role with the Client or any other person or body to whom the Client has introduced the employee, the Client will be charged a fee based on the Standard Fee Structure.

### Liability and Indemnities

- 4.6. Ablethorpe Recruitment makes every effort to maintain a high standard of Candidates and to provide proper details of their qualifications and experience. However, as these details are based on information provided to Ablethorpe Recruitment by the Candidate, their referees, and other third party organisations as relevant, Ablethorpe Recruitment is not liable for any errors, omissions, inaccuracies or incorrect conclusions. Ablethorpe Recruitment sources copies of qualifications from the Candidate, not the education institution. **Clients are responsible for the final recruitment decision and must satisfy themselves as to the suitability of the Candidate and authenticity of the candidate's qualifications and experience.**
- 4.7. Ablethorpe Recruitment is not liable for any loss, damage, costs or compensation (whether direct or indirect) which may be suffered by the Client, or for which the Client may become liable, arising from:
  - a) the introduction by Ablethorpe Recruitment of Candidates (or delay in any such introduction); or
  - b) the failure of a Candidate to accept an offer of employment or Contract Assignment.
  - c) conduct of the Candidate during employment with the Client.
- 4.8. The Client indemnifies Ablethorpe Recruitment (and keeps Ablethorpe Recruitment indemnified) on a full indemnity basis in respect of all losses, liabilities, costs or claims arising from or related to:
  - a) the actions or omissions of a Candidate, performing an assignment for the Client, whether wilful or negligent and whether or not occurring at the Client's premises or the place where the assignment is performed;
  - b) any failure or alleged failure of a Candidate, to duly perform his or her obligations;
  - c) personal injury or death of a Candidate, or any other person howsoever arising from, or related to the performance by a Candidate of his or her obligations; and
  - d) damage to any property arising from, or related to the performance by a Candidate, of his or her obligations.
  - e) any occasion when an On-Hire Employee or Independent Contractor carrying out a Contract Assignment with the Client is required to attend Jury Duty during the course of the Contract Assignment.
  - f) any omission, inaccuracy or conduct of the Client in relation to the recruitment services.

- 4.9. The Client further indemnifies Ablethorpe Recruitment (and keeps Ablethorpe Recruitment indemnified) on a full indemnity basis in respect of all claims related to the Candidate's assignment with the Client, including but not limited to termination of the assignment by the Client.

#### Goods and Services Tax (GST)

- 4.10. a) All fees payable under these terms of business are exclusive of GST.  
b) GST will be added to the fee at the prevailing rate unless it is assessed by Ablethorpe Recruitment to be GST exempt.  
c) Out of pocket expenses, when applicable, will be calculated and charged as the amount incurred by Ablethorpe Recruitment (net of any input tax credit to which Ablethorpe Recruitment is entitled) plus GST as applicable.

#### Privacy

- 4.11. The Client agrees to comply with the terms of the Privacy Laws regarding Personal information and not to use Personal Information except for the purpose of engaging or considering a Candidate, On-Hire Employee or Independent Contractor to provide services to the Client. The Client must ensure that before disclosing any Personal Information to Ablethorpe Recruitment, the Client is entitled to disclose that information and without taking any further steps as required by the Privacy Laws Ablethorpe Recruitment may use and disclose such information for the purpose of providing recruitment services under these Terms of Business. If the Client becomes aware of any breach or alleged breach of the Privacy Laws concerning information disclosed by Ablethorpe Recruitment to the Client or by the Client to Ablethorpe Recruitment, then the Client must notify Ablethorpe Recruitment immediately and comply with any reasonable directions of Ablethorpe Recruitment with respect to such breach.

#### Expenses

- 4.12. Couriers, overseas phone calls and video conferences, will be agreed with the Client in advance and billed to the Client at a fixed rate.
- 4.13. Display advertising costs will be discussed and agreed with the Client in advance and billed at the applicable rate.
- 4.14. Out of pocket expenses which may be included (such as accommodation, meals and travel) must be agreed with the Client in advance.
- 4.15. All agreed advertising expenses, couriers, overseas phone calls, video conferences and out of pocket expenses will be separately invoiced immediately after those expenses are incurred. Such invoices are strictly payable within seven days of the invoice date.

#### Payment for Work Performed

- 4.16. The Client shall make payment to Ablethorpe Recruitment for all work performed, including where the client materially changes it's specifications and Ablethorpe Recruitment performs additional work.

#### Other Client Obligations

- 4.17. For the Retained or Search roles, the Client is requested to refer all direct applicants and internal applicants to Ablethorpe Recruitment.
- 4.18. The Client must notify Ablethorpe Recruitment as soon as the Client makes an offer of employment to a Candidate introduced to the Client by Ablethorpe Recruitment and must provide details of that offer.
- 4.19. If the Client defers a hiring decision in respect of a recruitment assignment performed by Ablethorpe Recruitment and a Candidate is hired in the same role or another by the Client or a Client Related Entity, within 12 months of the date of the initial introduction by Ablethorpe Recruitment or the "first interview, whichever is later, the Client must pay to Ablethorpe Recruitment the appropriate placement fee in accordance with these Terms of Business.
- 4.20. A mutually agreed fee will be charged to a Client where Candidates on the Ablethorpe Recruitment database are transferred to a Client's database. This fee is in addition to any other fee charged under this agreement.