

## TERMS AND CONDITIONS OF BUSINESS

### PARTIES

1. Martin Personnel Limited (“Company”).
2. (“Client”)

### INTRODUCTION

The Company provides temporary staff to individuals and organisations on temporary assignments and the Company locates, selects and refers candidates for a fixed term and permanent employment or engagement as an independent contractor to its clients.

The Client requires the Company to provide from time to time the services of temporary staff and/or the Client requires the Company to refer candidates for contract roles and permanent roles to it on the following terms and conditions.

### INTERPRETATION

“**Annual Remuneration Package**” means the Permanent’s gross base annual salary plus any other cash payment made or to be made in connection with the Permanent’s engagement (whether to the Permanent or to any third party for the benefit of the Permanent) the amount of which is known or able to be determined at the date on which the Permanent is engaged but does not include any commission or bonus payments that are dependent upon performance or non-cash consideration.

“**Assignment**” means a short term or temporary position or role where the Temporary is an employee of the Company;

“**Candidate**” means a Temporary or Permanent;

“**Contract Role**” means a role for a fixed term;

“**Permanent**” means a person provided for the purposes of a Contract Role or a Permanent Role;

“**Permanent Role**” means a permanent position;

“**Temporary**” means a temporary staff member provided for the purpose of an Assignment;

### ACCEPTANCE

These Terms and Conditions apply to all Candidates provided by the Company for Assignments, Contract Roles and Permanent Roles.

### ADDITIONAL AND IMPLIED TERMS

These Terms and Conditions, and the terms agreed in respect of each Assignment, comprise the entire agreement between the parties and supersede all prior discussions and agreements covering the subject matter of these Terms and Conditions.

All implied terms, conditions and warranties are expressly excluded from these Terms and Conditions. The parties specifically acknowledge that the Client is procuring the services of the Company for business

purposes and that the provisions of the Consumer Guarantees Act 1993 will not apply in respect of any services provided by the Company.

The Company shall not be bound by any unauthorised statement, representation, warranty or commitment which is not authorised in writing by the Managing Director or General Manager of the Company.

These terms and conditions shall not be varied except in writing signed by the parties.

### **RATES FOR TEMPORARIES**

The rate to be charged for a Temporary will be as agreed between the Company and the Client prior to each Assignment, provided that the company may vary the rate to be charged for a Temporary at any time by notice in writing to the Client.

A minimum charge equal to four (4) hours at the hourly charge out rate agreed for the Temporary is payable for an Assignment.

The Client may cancel an Assignment by notice in writing to the Company at least twenty four (24) hours before the Assignment is due to commence in which case no charges will apply. If an Assignment is cancelled within twenty four (24) hours before the Assignment is due to commence, the Client will be liable to pay the Company the minimum charge for the Assignment.

The Client will ensure that the Temporary completes a timesheet for each day worked showing the number of hours worked on that day as appropriate and that an appropriately authorised representative of the Client signs each timesheet confirming that the number of hours recorded on the timesheet accurately reflects the number of hours worked.

Statutory Holidays that occur during an Assignment and are payable to the Temporary will be charged by the Company to the Client at cost, unless otherwise agreed in writing by the parties. Cost is defined as the Temporary's pay rate plus Holiday Pay plus \$2.50 per hour administration fee. Should a Temporary work on a Statutory Day they will be Paid and Charged at 1.5 time the agreed rates. If the Statutory Day is a normal day of work the Temporary will be Paid and Charged at 2.5 times the agreed rates.

### **FURTHER ENGAGEMENT OF TEMPORARY**

Where, within six months of the termination of an Assignment or the most recent referral of a Temporary to the Client:

- (a) the Client engages the Temporary as an employee or as an independent contractor; or
- (b) the Client introduces the Temporary to another person or organisation and that person or organisation engages the Temporary as an employee or as an independent contractor,

the Client will pay a fee calculated in accordance with the Company's schedule of charges for permanent or temporary staff (as appropriate).

The Client agrees that it shall not during the period that any services are provided pursuant to these Terms and Conditions and for a period of six (6) months thereafter, hire or employ any person who was a staffing provider or temporary or contractor of the Company or accept the assignment of such a person by another temporary employment firm without informing the Company in writing.

### **FEES FOR PERMANENTS**

The Client will pay a fee calculated in accordance with these Terms and Conditions if a Permanent referred to the Client for any position by the Company, is engaged whether as an employee or as an independent contractor by:

- (a) the Client (whether in that or any other position); or
- (b) any other person or organisation related or affiliated to or associated with the Client or to which the Permanent is referred by the Client,

within the period of six (6) months from the later of the initial referral or the most recent interview.

For the purposes of this clause, a Permanent includes any person contained in a submission or short list made or given by the Company to the Client, even though the person may be presented independently to the Client.

The fee payable by the Client will be the agreed percentage as set out in the following fee schedule of the Annual Remuneration Package of the Permanent at the commencement of his or her engagement by the Client or by the other person or organisation.

Where the Client requests the Company to provide additional services, for example psychometric testing, this will be charged in addition to the fee payable by the Client. The Company and the Client will agree to the charges to be paid for these additional services before they are provided.

Any travel, accommodation or similar out of pocket expenses will be paid by the Client provided such expenses are approved by the Client before such expenses are incurred.

The fee schedule for Permanent recruitment will be as follows:

<b>Salary</b>	<b>Fees</b>
\$0 - \$49,999	12.5%
\$50,000 - \$99,999	15.0%
\$100,000 +	17.5%

## **PAYMENTS**

The Client will pay all fees, charges and expenses which are invoiced by the Company, without deduction or set-off, weekly (seven days) and closing on a Sunday.

For the avoidance of doubt, any payments to be made under these Terms and Conditions are exclusive of GST (if any) and GST must be added to and paid by the Client.

No claim or dispute by the Client shall entitle the Client to deduct, set-off or withhold payment of any fees, charges and expenses owed to the Company.

The Company may charge interest on any overdue fees, charges and expenses at 5% above its bank's base commercial lending rate, plus any dishonour fees, calculated on a daily basis from the due date to the actual date of payment.

Where any payment is not made on the due date the Client will on demand reimburse the Company for all costs (including legal costs on a solicitor/client basis), expenses and other sums reasonably incurred by the Company in exercising any right or remedy available to it, which sum shall also carry interest at the rate specified above if unpaid within 14 days of demand having been made.

The Company may withdraw any Temporary on Assignment with the Client or refuse to provide or refer Candidates to the Client at any time if the Client does not comply with these Terms and Conditions.

Should any Contract Role or Permanent Role be put on hold, filled by an existing staff member or by the Client's external sources, any costs and expenses incurred by the Company will be reimbursed by the Client.

## **TESTING, REFERENCE CHECKING, DRUG TESTING AND SUITABILITY**

The Company will test and reference check Candidates when the Company deems it appropriate and practicable to do so. The Company will use its best endeavours to make known to the Client the Candidate's employment records, qualifications and salary requirements as accurately as possible. The Company will not be liable for any untrue statements or misrepresentations made by the Candidate.

Except where the Company is precluded by the Candidate or by law, the Company will not withhold any information about a Candidate which might adversely affect the Client.

While all due care will be taken to verify that the Candidate's qualifications are appropriate for and/or relevant to the position they are under consideration for, the Company requires the Client to independently confirm the qualifications with the appropriate authority before making an offer of employment.

The final decision as to whether or not to engage any Candidate is to be made by the Client.

## **LIABILITY AND INDEMNITY**

The Company will make every effort to ensure that the Client is satisfied with the services provided by the Company and the work performed by a Candidate. However, the Client is responsible for the decision whether or not to engage the Candidate, providing suitable advice and training to the Candidate, supervision of the Candidate and for all acts or omissions of the Candidate.

The Company will not be liable for any loss, damage or expense of any kind and whether direct, indirect or consequential suffered by the Client resulting from or arising out of or in connection with the introduction, referral, hiring or engagement of any Candidate or from any delay or failure by the Company to refer a Candidate to the Client or from the acts or omissions of a Candidate while on Assignment or in a Contract Role or Permanent Role.

The Client indemnifies the Company against any loss, damage or expense suffered by the Company, the Client or any third party arising from any act or omission of a Candidate while on Assignment or in a Contract Role or Permanent Role, or arising from any act or omission by the Client, or its employees, officers or agents in respect of a Candidate, or from any breach by the Client of these Terms and Conditions.

The provisions of this clause continue to bind the parties following the expiry or termination of any Assignment or Contract Role or Permanent Role or these Terms and Conditions.

## **INSURANCE**

Temporaries are not covered under the Company's insurance policy. The Client undertakes to ensure that any Temporary is adequately insured against any liability to third parties arising out of the Temporary's acts or omissions during the course of an Assignment.

Temporaries shall not be required to use their own vehicle for the purposes of an Assignment. However, where a Temporary uses their own vehicle for the purposes of an Assignment, the Client will be liable for any loss or damage caused or suffered by the Temporary, to the extent that it is not covered by the Temporary's own insurance cover.

## **GUARANTEES: TEMPORARY**

Where the Client is not satisfied with the performance or conduct of a Temporary, the Client must promptly advise the Company and the following shall apply:

- (a) If the Company is initially informed of the Client's concerns within four (4) hours of the start of an Assignment, the Temporary will immediately cease work for the Client and no charges will be incurred by the Client in respect of that Temporary. The Company will use reasonable endeavours to find a suitable replacement;
- (b) If the Company is initially informed of the Client's concerns after the first four (4) hours of an Assignment, the Company will use its best endeavours to replace the Temporary, but normal rates will be charged in respect of the Temporary.

## **GUARANTEES: PERMANENT**

Should a Permanent be terminated by the Client for cause, or leave or terminate the Permanent's arrangements with the Client (other than for breach by the Client) during the period of three (3) months from commencing the Contract Role or Permanent Role with the Client, the Client must promptly advise the Company and allow the Company an exclusive period of one (1) month to procure a replacement. The Company will use its reasonable endeavours during this period to procure a suitable replacement at no cost.

The Client will also receive a credit calculated as follows:

- (a) 75% of the original fee if the Permanent leaves in the first month;
- (b) 50% of the original fee if the Permanent leaves in the second month;

- (c) 25% of the original fee if the Permanent leaves in the third month.

Charges for any additional services and expenses paid by the Client shall not be included for the purposes of calculating any credit due.

If a suitable replacement is found, the credit will be applied against the fees associated with the engagement of the replacement. If a suitable replacement cannot be found, the credit will be offset against future fees which may become payable by the Client to the Company. No cash refund will be provided.

This guarantee only applies to the placement of Permanents for a Contract Role or Permanent Role having a minimum period of twelve (12) months. This guarantee does not apply should the Permanent be made redundant or their role, functions or duties change from those they were initially engaged to undertake.

The preceding guarantees apply only where the Client has paid the fees and other monies owing under these Terms and Conditions by the due date for payment and has observed and performed all other obligations under these Terms and Conditions.

The Client must promptly advise the Company if the Candidate files a personal grievance claim against the Client. In the event that the Candidate is found to have been unjustifiably dismissed any credit will be cancelled, and where the credit has been applied against any fees, the Client will immediately pay to the Company the amount of the credit.

Except as otherwise provided in these Terms and Conditions, the Client is not entitled to recover any money from the Company.

#### **NATURE OF RELATIONSHIP BETWEEN CLIENT AND PERMANENT**

The Client will contract directly with the Permanent and will be responsible for any contractual obligations or liabilities arising under that agreement.

If the Client requests the Company to prepare the Candidate's agreement, the Client must advise the Company of the relevant terms for inclusion in the agreement and ensure that the Company has a reasonable time frame to prepare the agreement so that the Candidate has the opportunity to seek independent advice prior to signing the agreement.

#### **NATURE OF RELATIONSHIP BETWEEN TEMPORARY AND COMPANY**

The parties agree that the Company will employ any Temporary and that the Temporary while on Assignment does not become an employee of the Client.

#### **SUBSTITUTION OF TEMPORARY EMPLOYEE**

The Company, in its sole discretion, may substitute one Temporary for another on any Assignment.

#### **COMPLIANCE WITH LEGISLATION**

The Client will comply with all legislative and regulatory requirements relating to employees and contractors.

#### **DETAILS OF ASSIGNMENT**

The Client will provide to the Company, the following details relating to the Assignment before the Temporary starts work on the Assignment:

- (a) a description of the work to be performed;
- (b) an indication of where the Temporary is to perform the work;
- (c) an indication of the hours to be worked by the Temporary; and
- (d) the Client's Health and Safety policies and/or procedures.

The Client understands that these details are required by the Company in order to comply with the requirements of the Employment Relations Act 2000, and its obligations under The Health and Safety at Work Act 2015. If the Client fails to provide this information before the commencement of the Assignment, the Company may not be able to provide the Temporary, in which case the Company will not have breached these Terms and Conditions.

## **HEALTH AND SAFETY**

The parties recognise that both have obligations to the Temporary under The Health and Safety at Work Act 2015. As the Temporary will be on the Client's premises in order to complete the Assignment, the Client will ensure that the Temporary receives appropriate training and induction in the safe operation of any equipment needed to perform the Assignment, emergency procedures, and the safe performance of the Temporary's duties. The records of such training and induction shall be made available to the Company on request.

The Client will take all practicable steps to ensure that no hazard that is or arises in the Temporary's place of work causes harm to the Temporary.

The Temporary's physical and mental state of health is monitored through specific fields outlined on the Company's timesheets and through regular verbal communication with the Temporary and the Client, the details of which are all recorded on the Client and Temporary's computer files. For example, where it is identified by payroll that a Temporary has worked in excess of 60 hours per week for more than two consecutive weeks, the Client and the Temporary are notified and action taken to reduce the Temporary's hours of work and therefore the possibility of any harm being done to the Temporary or other employees.

In order for the Company to comply with its statutory obligations, regular visits are required by the Company's representatives to the location of the Assignment. This is needed to maintain familiarity with the health and safety factors relating to the location of the Assignment and to ensure to the best of their ability that the site is legally compliant.

The Client will ensure that the Temporary wears and/or uses any protective clothing and/or equipment required in performing the Assignment.

The Client will nominate a contact person with whom the Temporary may confer in the event of any health and safety issues or concerns.

The Client will immediately inform the Company in the event of any incident, accident or near-miss involving the Temporary.

In the event that the Company (in its sole discretion) believes that a hazard in or arising in the Client's premises or operations poses an unacceptable risk to the health and/or safety of the Temporary, the Company shall be entitled, without penalty, to withdraw the Temporary (but without releasing the Client from liability to pay the agreed rates as set out in these Terms and Conditions). If within a reasonable time the hazard is not eliminated, isolated or minimised to the satisfaction of the Company, the Company shall be entitled to terminate the Assignment, but without prejudice to the obligations of the Client to pay the fees provided in these Terms and Conditions.

## **PERSONAL PROTECTIVE CLOTHING/EQUIPMENT**

The Client agrees that it is in the best position to establish whether protective clothing and/or equipment is required by the Temporary in performing the Assignment and, if so, the exact requirements. For this reason, the Client agrees to provide to the Temporary any protective clothing and/or equipment required, unless the Temporary voluntarily agrees to provide his or her own clothing or equipment.

If the Temporary wishes to provide his or her own clothing or equipment, the Client will inspect such to establish whether or not it is suitable. If it is not suitable, the Client will provide suitable clothing and/or equipment.

## **LIABILITY WHERE BREACH**

If any Candidate is injured or suffers any illness or any property of the Candidate is damaged or destroyed due to any statutory breach or the breach of any contractual obligation or common law duty by the Client while working for the Client, the Client will indemnify the Company in respect of any liability arising there from including, but not limited to, any:

- (a) claims brought by the Candidate against the Company;
- (b) damages or penalties imposed on the Company under any Act or Regulations;
- (c) payments to be made by the Company under the Injury Prevention and Rehabilitation and Compensation Act 2001 (and amending or substituting legislation), including any increases in levies paid by the Company under the Act as a result of an injury or the accident causing the injury.

## **CONFIDENTIALITY**

The Company will keep confidential all information imparted to the Company by the Client which relates to the business of the Client and which the Client declares is confidential.

All information in respect of a Candidate is confidential information imparted to the Client for the sole purpose of enabling the Client to determine whether the Candidate is suitable for employment. The Client will keep such information confidential and will not use it for any other purpose. The Client will return to the Company, or destroy, information relating to any potential Candidate who does not obtain a role with the Client.

## **GENERAL**

Any failure or delay by either party in exercising any right, power, privilege or remedy under these Terms and Conditions will not operate as a waiver. A single or partial exercise of any right, power, privilege or remedy under these Terms and Conditions will not prevent the exercise of that right, power, privilege or remedy in the future.

These Terms and Conditions are binding on, and for the benefit of, the successors and assigns of the parties. The Client may not assign these Terms and Conditions without the prior written consent of the Company.

These Terms and Conditions are governed by New Zealand law.