

terms of business

hr partners – a randstad company

This document sets out the terms and conditions ("**Terms of Business**") upon which Digby Morgan Pty Ltd ABN 55 125 434 166 trading as HR Partners – a Randstad company with its registered office at Level 5, 109 Pitt Street, Sydney, NSW 2000 ("**HR Partners**") will introduce and supply Candidates, Contractors or Temporary Employees, as applicable, to the Client. Notwithstanding the absence of a signature from the Client, these Terms of Business are deemed to be accepted by the Client by virtue of its request for, interview with or Introduction of a Candidate, Contractor or Temporary Employee, or the passing of any information by the Client about such workers to any third party following an Introduction and shall prevail over any conflicting terms and conditions put forward by the Client.

Client Details

Client name:

Billing name:

Address:

Email address:

ABN/ACN:

Contact name:

Phone number:

Cost register (office use):

As an authorised representative of the Client, I accept these Terms of Business for and on behalf of the Client:

Signed:

Name:

Position:

Date:

permanent/fixed term staff

These Terms of Business apply to HR Partners and each prospective employer of a Candidate who employs or otherwise engages a Candidate Introduced to it by HR Partners.

1. Definitions

For the purpose of these Terms of Business the following definitions will apply:

- "**Candidate**" means any person Introduced to the Client by HR Partners for the purpose of them being

considered for employment or other engagement by the Client.

- "**Client**" means any person or corporation (or any "related" or "associated" person or corporation of them, within the meaning of those terms in the Corporations Act 2001 (Cth)) that authorises HR Partners to provide Candidate(s) to it (or its representative) or interviews a Candidate.
- "**Contractor or Temporary Employee**" means any person supplied by HR Partners to the Client to provide contracting or labour hire services to the Client.

- **"Fee Schedule"** means the schedule of fees attached to these Terms of Business, or the fees as notified by HR Partners.
- **"GST"** has the same meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- **"Introduction"**, in relation to a Candidate, means where HR Partners supplies, orally or in writing, any information about a Candidate to the Client (such as the Candidate's name, academic record, employment history or other relevant information); and "Introduced" has a corresponding meaning.
- **"Part-Time Placement"** means a Candidate placed with a Client where they will work less than 5 working days each week or less than the applicable standard/award full-time hours per week.
- **"Parties"** means HR Partners and the Client and their respective successors and permitted assignees. **"Party"** shall be construed accordingly.
- **"Placement Fee"** means the fee that is payable by the Client to HR Partners if the Client employs a Candidate or otherwise engages with a Candidate in accordance in the circumstances described in clause 3.2, charged in accordance with the Fee Schedule.
- **"Privacy Laws"** means the Privacy Act 1988 (Cth), and any amendments and regulations made pursuant to the Privacy Act 1988 (Cth).
- **"Salary Package"** means the anticipated gross remuneration package payable to the Candidate in the first year of their employment which includes gross annual salary, applicable benefits (including superannuation), commission, bonuses, allowances, joining inducements and the costs of the provision and maintenance of a motor vehicle to or for the benefit of the Candidate.

2. Acceptance of Terms of Business

The Introduction of a Candidate will constitute acceptance by the Client of these Terms of Business (if not previously accepted).

3. Placement Fee

- 3.1** The Client must notify HR Partners in writing if it has employed a Candidate, as soon as practicable after the occurrence of the event.
- 3.2** The Client will be liable to pay HR Partners a Placement Fee for a Candidate, in accordance with these Terms of Business, in any of the following circumstances:
- (a) if in any way the employment of the Candidate is as a consequence of or is otherwise attributable to the Introduction of the Candidate by HR Partners;
 - (b) if HR Partners Introduced the Candidate to the Client and (in breach of confidence or otherwise) the

Client passes the details of the Candidate to a third party (including its subsidiaries, affiliated or related companies) that subsequently employs the Candidate within 12 calendar months of the date of Introduction;

(c) the Candidate is employed by the Client (irrespective of the position in which they are employed) within a period of one year after he/she was last Introduced to the Client by HR Partners; or

(d) if the Client employs a HR Partners employee, Contractor or Temporary Employee who is performing an assignment for the Client or who has performed an assignment for the Client within the past 12 months.

3.3 The Placement Fee is calculated as a percentage of the Salary Package as per the Fee Schedule. The Placement Fee must be paid to HR Partners within 14 days of the date of the relevant tax invoice.

3.4 As the recruitment services being provided by HR Partners are identical irrespective of the type of role, HR Partners will charge the full time equivalent Placement Fee for a Part-Time Placement (with no pro-rating), e.g. if HR Partners recruits a 0.5 FTE and the full time equivalent salary is \$60,000 pa then the Part-Time Placement Fee will be HR Partners' margin % x \$60,000.

4. Retained Assignment and Executive Search

A non-refundable service fee of 40% of the reasonable estimation of the Placement Fee will be invoiced on acceptance of a retained or executive assignment, and must be paid by the Client in order for the next stage of the recruitment process to continue. The remainder of the Placement Fee will be invoiced at the time of the successful placement.

5. Placement Guarantee

5.1 If any Candidate placed in a permanent role by HR Partners leaves the Client's employment within 3 months of commencement (the **"Guarantee Period"**), HR Partners will endeavour to find a replacement at no additional charge to the Client (the **"Placement Guarantee"**) as long as the following conditions have been met:

(a) the Client paid the Placement Fee within 14 days from the relevant tax invoice date;

(b) prior to the expiration of the Guarantee Period the Client advised HR Partners in writing of its intention to call upon the Placement Guarantee;

(c) the original job description and assignment specification do not alter;

(d) cessation of the employment was not due to restructuring of the role, retrenchment or redeployment or substantiated grievance against the Client; and

(e) HR Partners is given the exclusive recruitment opportunity to find a replacement Candidate for a period of at least 4 weeks.

(f) If the Placement Guarantee conditions are not met, the Placement Guarantee is null and void.

5.2 If HR Partners is unable to source a suitable replacement Candidate after having had a 4 week exclusive period to do so, HR Partners will then (at the Client's discretion) continue to try to find a replacement Candidate or credit the Client's account the Placement Fee, or a portion of the Placement Fee, in accordance with the Fee Schedule. The credit will be valid for 12 months from the date it is raised.

5.3 No Placement Guarantee is provided for a Candidate who has been placed in a permanent role where a Placement Guarantee has already been called on or where the Candidate was previously engaged as a Contractor or Temporary Employee or on a fixed term placement.

6. Fixed Term Placements

6.1 A Placement Fee for fixed term placements will be charged on a pro rata basis (on the basis that the full Placement Fee is payable for a period of 12 months or more). If the Candidate is subsequently offered (and accepts) a permanent position, the Client will be charged the balance of the full Placement Fee amount in accordance with these Terms of Business. If the fixed term placement is extended, but not fully converted to a permanent position, the Client will be invoiced a further pro rata amount based on the additional period the Client intends the Candidate to continue. This arrangement will be repeated until the amount of the Placement Fee for a permanent placement has been invoiced and paid. For fixed term placements of less than 6 months there will be a minimum pro rata charge of 50%.

6.2 HR Partners will endeavour to provide the Candidate with accurate details of the fixed term assignment and to provide the Client with accurate information regarding the Candidate (in terms of qualifications and experience), but cannot accept responsibility for any loss, expense, damage or delay, in connection with the Introduction of the Candidate, the Candidate's subsequent employment or otherwise.

6.3 The Client agrees that it will investigate references, and satisfy itself regarding any medical requirements, qualifications, and working rights as it may see fit including where such investigations are undertaken by HR Partners on the Client's behalf.

7. Limitation of Liability

7.1 Once a Candidate commences employment with the Client, the Candidate is subject to the Client's supervision, control or direction.

7.2 The Client agrees that HR Partners shall not be liable for any acts, omissions or errors of any Candidate whatsoever, and the Client agrees to indemnify HR Partners from any liabilities, losses or claims incurred or suffered as a result of the engagement of, or acts or omissions by the Candidate whatsoever.

7.3 HR Partners' liability under these Terms of Business whether in contract, tort (including negligence) or otherwise shall be limited to 100% of the fees which are paid at the time that the liability arises. This clause survives termination of any agreement between the Parties.

7.4 Neither Party will be liable to the other for any indirect or consequential losses including loss of profit, revenue, production, reputation or any special, punitive or exemplary damages.

8. GST

All fees (including Placement Fees) referred to in these Terms of Business are subject to GST.

9. Confidentiality and Privacy

9.1 Each Party agree to hold information of the other that is notified as being confidential or can be reasonably regarded as being confidential, in confidence, and will not disclose such information without the consent of the other Party unless required by law or it has already been made available to the public other than through a breach of this clause.

9.2 The Client is required to respect and protect the privacy of Candidates at all times. If the Client becomes aware of any breach of the Privacy Laws concerning information disclosed by HR Partners to the Client, then the Client must notify HR Partners immediately and comply with any reasonable directions of HR Partners with respect to the breach.

10. Assignment

Neither party may assign, transfer or sub-contract in whole or in part any of its rights or obligations under these Terms of Business without the prior written consent of the other party. Except, HR Partners may freely assign receivables due to it.

11. Variations

Any variation to these Terms of Business must be mutually agreed by both Parties in writing.

12. Governing Law

These Terms of Business shall be governed by the laws of the state or territory where the recruitment services are provided (otherwise New South Wales). The Parties submit to the jurisdiction of the courts of such state or territory.

13. Economic Sanctions

Client warrants that the provision of services and payment hereunder shall not result in breach of any trade, economic or financial sanctions laws or regulations.

contractor & temporary employee staff

These Terms of Business apply to HR Partners and each Client which requests or authorises HR Partners to provide to it a Contractor or Temporary Employee or engages a Contractor or Temporary Employee provided by HR Partners.

14. Definitions

For the purpose of these Terms of Business the following definitions will apply:

- **“Client”** means any person or corporation (or any “related” or “associated” person or corporation of them, within the meaning of those terms in the Corporations Act 2001 (Cth)) that authorises HR Partners to provide a Contractor or Temporary Employee.
- **“Contractor or Temporary Employee”** means any person supplied by HR Partners to the Client to provide contracting or labour hire services to the Client.
- **“Introduction”**, in relation to a Contractor or Temporary Employee, means where HR Partners supplies, orally or in writing, any information about a Contractor or Temporary Employee to the Client (such as their name, academic record, employment history or other relevant information); and **“Introduced”** has a corresponding meaning.
- **“Parties”** means HR Partners and the Client and their respective successors and permitted assignees. **“Party”** shall be construed accordingly.
- **“Placement Fee”** means the fee that is payable by the Client to HR Partners if the Client employs a Contractor or Temporary Employee or an employee or consultant of HR Partners, as notified by HR Partners.
- **“Privacy Laws”** means the Privacy Act 1988 (Cth), and any amendments and regulations made pursuant to the Privacy Act 1988 (Cth).

15. Acceptance of Terms of Business

The Introduction of a Contractor or Temporary Employee will constitute acceptance by the Client of these Terms of Business (if not previously accepted).

16. Fees

16.1The Client agrees to pay HR Partners’ hourly, daily or weekly fees (as applicable) for the services of the Contractor or Temporary Employee, as advised to the Client at the time the Client books the services of the Contractor or Temporary Employee, for all hours, days or weeks, actually engaged, from the time the Contractor or Temporary Employee commences duties.

16.2Out of pocket expenses (such as accommodation, meals and travel) are to be agreed in advance between HR Partners and the Client and will be itemised on the invoice in addition to the fees, and are payable by the Client with the balance of the invoice.

16.3There will be a minimum daily booking fee of 4 hours for Contractors or Temporary Employees.

16.4The Client must pay the fee to HR Partners according to the number of hours worked by a Contractor or Temporary Employee.

16.5Fees will be invoiced weekly and are payable to HR Partners within 7 days from the date of invoice.

16.6HR Partners may vary the fee at any time (including retrospectively) without notice to reflect the following:

(a) changes to CPI or market rates;

(b) shift penalties, overtime rates, allowances or other rates payable pursuant to any award, agreement or rate of pay applicable to Contractor or Temporary Employee; and

(c) statutory charges, levies, taxes, insurances or other payments including on-costs HR Partners is lawfully required to make or for which HR Partners may become liable in respect of providing a Contractor or Temporary Employee under these Terms of Business.

17. Further Contracting or Employment of Contractor or Temporary Employee, Worker or HR Partners Employee

17.1If the Client engages a Contractor or Temporary Employee in any capacity, whether directly or indirectly (including where the Contractor or Temporary Employee is transferred to another supplier of recruitment services), in any instance while they are performing the relevant assignment or within 12 months after they have last performed a similar assignment for the Client, the Client must pay to HR Partners the usual permanent Placement Fee in respect of the Contractor or Temporary Employee in accordance with the Fee Schedule.

17.2 The Client agrees to notify HR Partners immediately if it engages a Contractor or Temporary Employee in the circumstances outlined in clause 17.1, and to pay the relevant Placement Fee to HR Partners within 7 days of receipt of the relevant tax invoice.

17.3 No placement guarantee applies to permanent appointments resulting from the engagement of a Contractor or Temporary Employee or to fixed term placements.

18. Client Obligations

18.1 The Client undertakes to supervise the Contractor or Temporary Employee to ensure reasonable standards of workmanship. If the standards of the Contractor or Temporary Employee prove to be unsatisfactory, HR Partners may reduce or cancel the charge for the time worked by the Contractor or Temporary Employee, provided that the Contractor or Temporary Employee leaves their assignment immediately and that notification is received from the Client within 4 hours of the Contractor or Temporary Employee commencing duties, and such notification is promptly confirmed in writing.

18.2 From the time the Contractor or Temporary Employee reports to take up duties, they are deemed to be under the supervision, direction or control of the Client for the duration of the assignment. The Client agrees to be responsible for all their acts, errors or omissions (wilful, negligent or otherwise) as though the Contractor or Temporary Employee was employed by the Client, and the Client will, in all respects, comply with all statutes, by-laws and legal requirements to which the Client is ordinarily subject to in respect to the Client's employed staff including ensuring the health and safety of the Contractor or Temporary Employee. However, nothing contained or implied in these Terms of Business will be deemed to define the Contractor or Temporary Employee as an employee of the Client for any other purpose or purposes.

18.3 HR Partners is to be provided with not less than eight hours notice of cancellation or postponement of any individual Contractor or Temporary Employee assignment.

18.4 (a) Under the relevant Work Health and Safety ("WHS") laws, HR Partners and the Client have mutual obligations in ensuring the health and safety of HR Partners Contractors and Temporary Employees. The Client acknowledges and agrees it has a duty of care to the Contractor or Temporary Employee and must ensure the provision of:

- a safe workplace;
- a safe work system;
- adequate supervision and training;

- an induction to site and equipment, including
 - amenities and evacuation procedures; and
 - elimination of hazards and controlling risks to health and safety.
- (b) The Client agrees to notify HR Partners of any changes to the workplace, place of work or tasks to be performed by the Contractor or Temporary Employee.
- (c) The Client shall not allow the Contractor or Temporary Employee to carry out work on a site or on equipment considered unsafe by any Party, or where the Contractor or Temporary Employee does not have the appropriate qualifications or previous experience and has not received adequate training.
- (d) The Client shall notify HR Partners of any injuries to the Contractor or Temporary Employee and notify the relevant authority of any serious injuries.
- (e) The Client agrees to hold HR Partners harmless from any penalty or cost issued or incurred by HR Partners due to the negligence or breach of any statutory obligation by the Client.
- (f) HR Partners will take every opportunity to ensure that the Contractor or Temporary Employee adhere to dress standards and present for work wearing the appropriate clothing and footwear (where required). It is the Client's responsibility to ensure that the Contractor or Temporary Employee does not commence work unless wearing the correct personal protective equipment for the intended task.
- (g) The Client must so far as is reasonably practicable consult, cooperate and coordinate with HR Partners, its Contractors and Temporary Employees so as to achieve effective coordination of activities to ensure optimal work health and safety risk management and enable HR Partners and its Contractors and Temporary Employees to comply with respective obligations under all relevant WHS laws.

18.5 If a Temporary Employee provides continuous service for the benefit of the Client for at least 42 months, HR Partners will commence accruing for the applicable long service leave for the Temporary Employee. The long service leave will be charged as an on-cost to the Client. HR Partners reserves the right to seek reimbursement from the Client for any long service leave amounts that have not been accrued for in accordance with this clause 18.5.

19. HR Partners Obligations

19.1 HR Partners makes every effort to provide Contractors or Temporary Employees in accordance with Client's booking details and to ensure each Contractor or Temporary Employee provided to the Client performs their duties with reasonable standards of skill, integrity and reliability.

19.2 HR Partners will maintain adequate insurance as required under any applicable law, at such coverage limits in accordance with good professional practice and against insurable risks which may be incurred from the recruitment services provided.

20. Limitation of Liability

20.1 HR Partners' liability under these Terms of Business whether in contract, tort (including negligence) or otherwise shall be limited to 100% of the fees which are paid or payable by the Client to HR Partners in the 12 calendar months preceding the event which gave rise to HR Partners' liability and in no event shall exceed an aggregate total sum of \$100,000 per year. This clause survives termination of any agreement between the Parties.

20.2 Neither Party will be liable to the other for any indirect or consequential losses, loss of profit, revenue, production, reputation or any special, punitive or exemplary damages.

HR Partners will not be liable for any loss, expense, damage or delay arising from any failure to provide any particular Contractor or Temporary Employee for all or part of the period of the assignment or for any negligence, dishonesty, misconduct, fraudulent behaviour or lack of skills of the Contractor or Temporary Employee provided.

21. GST

All fees referred to in these Terms of Business are subject to GST.

22. Confidentiality and Privacy

22.1 Each Party agree to hold information of the other that is notified as being confidential or can be reasonably regarded as being confidential, in confidence, and will not disclose such information without the consent of the other Party unless required by law or it has already been made available to the public other than through a breach of this clause.

22.2 The Client is required to respect and protect the privacy of Contractors and Temporary Employees at all times. If the Client becomes aware of any breach of the Privacy Laws concerning information disclosed by HR Partners to the Client, then the Client must notify HR Partners immediately and comply with any reasonable directions of HR Partners with respect to the breach.

23. Assignment

Neither party may assign, transfer or sub-contract in whole or in part any of its rights or obligations under these Terms of Business without the prior written consent of the other party. Except, HR Partners may freely assign receivables due to it.

24. Variations

Any variation to these Terms of Business must be mutually agreed by both Parties in writing.

25. Governing Law

These Terms of Business shall be governed by the laws of the state or territory where the recruitment services are provided (otherwise New South Wales). The Parties submit to the jurisdiction of the courts of such state or territory.

26. Economic Sanctions

Client warrants that the provision of services and payment hereunder shall not result in breach of any trade, economic or financial sanctions laws or regulations.