



TERMS OF BUSINESS

Roothing and Building Recruitment Limited (**RBR**) agrees to provide temporary staff (**Temporary Workers**) and/or potential permanent staff (**Candidates**) to _____ (**Client**) as set out in the Roothing and Building Recruitment Limited: Terms of Business, the Welcome Letter and the Proposal Letter (**Terms**).

ACCEPTANCE OF TERMS

1. The Client is deemed to have accepted these Terms upon either:
 - 1.1. The return of a signed copy of the Welcome Letter; or
 - 1.2. The interviewing or engagement of a Candidate or Temporary Worker; or
 - 1.3. The passing to any other person or organisation of personal information pertaining to a Candidate or Temporary Worker introduced to the Client by RBR.

RECRUITMENT

2. A recruitment fee is payable upon a Candidate's engagement in any capacity by the Client (**Recruitment Fee**).
3. The Recruitment Fee is calculated at 15% of the Candidate's accepted Annual Remuneration Package, which includes base salary/wages and the value of any other benefits/allowances such as, but not limited to, bonuses, commission, motor vehicles and travel allowances. Unless otherwise specified, where a company vehicle is part of the package it will be valued at the nominal amount of \$14,000.00.
4. The Client agrees to pay the cost of all forms of advertising for the recruitment of Candidates regardless of the successful or otherwise outcome of the recruitment process.
5. The Client agrees to pay all disbursements arising in the course of the recruitment process. Any additional consulting services such as Psychological Appraisal, Career Counselling, Internal Appointments and Outplacement Services will be priced on application.
6. RBR will make every reasonable effort to ensure the suitability of Candidates introduced to the Client; however, RBR does not warrant or guarantee the suitability of any Candidate. The final selection of Candidates rests with the Client, including the Client's satisfaction with any qualifications and medical conditions to be met. RBR does not take any responsibility or accept any liability for any Candidate being unsuitable for the Client.
7. Introductions of Candidates are confidential. If a Candidate is introduced to the Client and is subsequently engaged in any capacity by a third party as a result of the Client introducing that third party to the Candidate, the Client will be liable to pay the applicable Recruitment Fee as if the Candidate had been engaged by the Client.

CANDIDATE REPLACEMENT GUARANTEE

8. Except as provided for in Clauses 9-13, in the event a Candidate's employment is terminated within three (3) months of their start date (**Termination**), RBR will provide a suitable replacement for that Candidate (**Replacement**) on the following basis (**Replacement Guarantee**):
 - 8.1. If termination occurs within the first month from commencement of employment, a Replacement will be provided free of charge.
 - 8.2. If termination occurs during the second month after commencement of employment a Replacement will be provided at a rate of 50% of the applicable Recruitment Fee.
 - 8.3. If termination occurs during the third month after the commencement of employment a Replacement will be provided at a rate of 75% of the applicable Recruitment Fee.
9. This Replacement Guarantee will only be honoured if:
 - 9.1. The Termination was not for redundancy, relocation, company closure or change of management;
 - 9.2. The Fees and any other payments or disbursements in relation to the relevant Candidate are received by RBR within 7 days of the date of the invoice;
 - 9.3. RBR has been notified within seven (7) Business Days of the termination; and
 - 9.4. The Candidate has not been engaged by any entity related to or affiliated with the Client.
10. The Replacement Guarantee only extends to find a Replacement for the original Candidate's position and remuneration package. If the position or remuneration package changes, RBR reserves the right to charge the Recruitment Fee.
11. Where a Replacement has been engaged by the Client, no Replacement Guarantee will be provided for that Replacement.
12. No Replacement Guarantee is provided for Temporary to Permanent Recruitment as set out in Clause 20.
13. In the event a suitable Replacement is not found within a reasonable time period, a credit note shall be applied at the agreement between both parties.

LABOUR HIRE

14. RBR will provide Temporary Workers to the Client for an agreed period of time (**Engagement**). The Client must engage a Temporary Worker for a minimum of four (4) of hours per day (**Minimum Engagement**).

15. Prior to the Engagement, the Client will provide RBR with a description of work for the Engagement containing the following information (**Order Form**):
 - 15.1. The job description and duties of the Temporary Worker;
 - 15.2. The necessary qualifications, skills, and licences required of the Temporary Worker;
 - 15.3. The plant and machinery to be used during the Engagement;
 - 15.4. The time and date upon which the Engagement is to commence;
 - 15.5. the time and date upon which the Engagement is to terminate (if applicable);
 - 15.6. The location(s) where the duties are to be performed; and
 - 15.7. The details of any of the Client's policies with which a Temporary Worker will be required to comply.

TEMPORARY WORKER FEES

16. The Temporary Worker Hourly Rate is set out in the Proposal Letter (**Hourly Rate**). RBR reserves the right to increase the Hourly Rate at its discretion after six (6) months from the date of the Proposal Letter.
17. The Hourly Rate includes all wages, PAYE, ACC levies, KiwiSaver, leave provisions, termination and administration costs for the Temporary Worker.
18. Additional fees will be charged where:
 - 18.1. The Client's policy requires overtime rates;
 - 18.2. Where the Temporary Worker is engaged to work on a public holiday; or
 - 18.3. Expenses are incurred by the Temporary Worker during the course of the Engagement as agreed by the Client and RBR prior to the commencement of the Engagement.
19. The Client is required to provide all Temporary Worker timesheets (**Timesheets**) by 5pm the Tuesday following the week any work was undertaken by a Temporary Worker. RBR will charge the Client a \$50.00 late fee if Timesheets are provided late.
20. **Temporary to Permanent Recruitment:** If a Temporary Worker is offered and accepts any type of employment or engagement as an independent contractor with the Client or with any third party to whom the Client introduces the Temporary Worker, either during an Engagement or within 12 months of the end of an Engagement, then the Client will pay a Recruitment Fee as set out in the Proposal Letter.

HEALTH AND SAFETY

21. Prior to the commencement of the Engagement the Client must provide RBR with a copy of all Health and Safety documentation.
22. The Client authorises RBR to enter the Client's site from time to time for the purpose of carrying out site inspections and to assess risks and hazards, to meet with the Temporary Workers, and to investigate accidents, incidents and injuries.

23. The Client will:
 - 23.1. Ensure, so far as reasonably practicable, the Temporary Worker's health and safety during the Engagement;
 - 23.2. Ensure its premises are safe and will not expose the Temporary Worker to any risk of injury;
 - 23.3. Undertake regular health and safety inspections, including of the site and any property, plant, and equipment made available for Temporary Workers' use;
 - 23.4. Undertake a site-specific health and safety induction with the Temporary Worker prior to the commencement of work including emergency evacuation procedures;
 - 23.5. Ensure all necessary licences, permits, and approvals are obtained and maintained for the site and any property, plant, and equipment made available for Temporary Workers' use;
 - 23.6. Provide adequate supervision and training to the Temporary Worker;
 - 23.7. Provide the Temporary Worker with all statutory rest and meal break entitlements;
 - 23.8. Not allow the Temporary Worker to carry out work that is beyond his/her qualifications, experience, and/or general capabilities, or on equipment that is considered unsafe by any party.
24. The Client warrants that all work is carried out in a safe and responsible manner and that it will comply with all RBR requirements and the Health and Safety at Work Act 2015.
25. If RBR or an authorised representative of RBR believes (in its/their sole discretion) that a hazard in or arising from the Client's premises or operations poses an unacceptable risk to the health and/or safety of a Temporary Worker (**Hazard**), RBR will be entitled, without penalty, to withdraw the Temporary Worker from the Client. In the event a Temporary Worker is withdrawn under this Clause 25, the Client will remain liable to pay the Fees as set out in these Terms. If the Hazard is not eliminated within a reasonable timeframe RBR will be entitled to terminate the Engagement.

PERSONAL PROTECTIVE EQUIPMENT

26. RBR will provide the Temporary Worker with suitable Personal Protective Equipment (PPE) required for the Temporary Worker to perform his/her duties.
27. Should the Temporary Worker wish to provide his/her own PPE, the Client must inspect the Worker's PPE to ensure its suitability for the work to be undertaken.
28. The Client may provide its own suitable PPE to the Temporary Worker (**Client PPE**). In these circumstances the Client must provide adequate training to the Temporary Worker on the proper use of Client PPE.
29. The Client must ensure that the Temporary Worker does not commence work unless wearing correct PPE for the intended work.

DRUG TESTING

30. RBR will ensure all Temporary Workers and Candidates undertake pre-employment drug tests.

31. The Client will notify RBR immediately if a Temporary Worker is required to undertake a drug and/or alcohol test (**Test**) at any time during an Engagement. The Client will notify RBR immediately if a Temporary Worker returns a non-negative Test.

REPORTING

32. The Client will immediately notify RBR of:
- 32.1. Any changes to the Order Form, site, work practices or procedures, plant, equipment, materials, or substances which affect the duties of any Temporary Workers prior to the commencement of work;
 - 32.2. Any accidents, incidents or near misses involving a Temporary Worker;
 - 32.3. Any issues or concerns with the Temporary Worker's performance;
 - 32.4. If a Temporary Worker is required to work hours additional to those set out in the Order Form; and
 - 32.5. If a Temporary Worker does not report for work at the agreed time.
33. The Client may place a Temporary Worker on suspension where there appears to have been serious misconduct. Where practicable, the Client must give the Temporary Worker the opportunity to explain the circumstances of the incident at issue, prior to deciding whether suspension is appropriate or not. The Client must immediately notify RBR if a Temporary Worker is placed on suspension.
34. RBR is responsible for any disciplinary or performance processes for any Temporary Workers. The Client must not initiate any disciplinary proceedings against Temporary Workers.

TEMPORARY WORKER REPLACEMENT

35. If the Client is not satisfied with a Temporary Worker and wants RBR to replace the Temporary Worker, the Client must:
- 35.1. Notify RBR in writing of the request to replace the Temporary Worker; and
 - 35.2. Not communicate directly with or otherwise indicate to the Temporary Worker that the Engagement will be terminated.
36. Subject to there being no outstanding Fees or other amounts owed by the Client, RBR will then replace the Contracted Worker with another Contracted Worker.

CANCELLATION BY CLIENT

37. **Labour Hire:** The Client must give at least 24 hours' notice of cancellation of an Engagement. If the Client gives less than 24 hours' notice of cancellation then RBR will charge a cancellation fee equivalent to the fee for the Minimum Engagement plus GST.
38. **Recruitment:** RBR reserves the right to charge up to one third of the Recruitment Fee for a permanent recruitment assignment that is withdrawn or cancelled by the Client after the recruitment process has been commenced.

PAYMENT

39. RBR will issue an invoice (**Invoice**) for, and the Client will pay, the fees set out in these Terms (**Fees**) plus GST. Unless otherwise agreed, the Client will pay the Fees within 7 days of the Invoice date.
40. Any invoice disputes or claims arising from invoices must be raised with RBR within 7 days of the Invoice date. RBR will not accept disputes raised after this timeframe as legitimate disputes for the purposes of not paying any outstanding invoices.
41. Interest will immediately become payable on all overdue amounts at the rate of 5% per annum from the date payment is due until payment is made in full.
42. Payment of all monies will be without set-off or deduction of any kind.
43. Unless specified by the Client, payments received from the Client will be apportioned by RBR to outstanding accounts in such amounts and in such order as RBR may determine in its sole discretion.
44. RBR will not be bound by any conditions or qualifications of terms which the Client attaches to any payments unless RBR communicates acceptance of any such conditions or qualifications in writing, including any payments expressed to be in full and final settlement.
45. The Client must notify RBR in writing of any material change in ownership or business structure. The Client must then obtain the RBR's written acceptance of any such change. If the Client does not obtain such written acceptance, the Client will remain liable for all debts incurred by any other person trading on the Client's account with RBR. RBR is not required to verify that any person using the Client's account has authority to do so. The Client may not refuse to pay charges to the Client's account on the basis that the person using the Client's account did not have the requisite authority. Where there is more than one party named as the account holder, each such person's liability under these Terms is joint and several.

LIMITATION OF LIABILITY

46. The Temporary Worker will be under the absolute direction and control of the Client during the Engagement. The Client acknowledges and accepts that RBR will not be responsible for any direct or indirect loss suffered by the Client or any third party as a result of any action or omission of a Temporary Worker or Candidate.
47. RBR will not be liable for any damage suffered or loss incurred by the Client as a result of the failure of RBR to provide a Temporary Worker or Candidate.
48. RBR accepts no liability for any debts to the Client incurred by the Temporary Worker.
49. The Client will indemnify RBR against any loss or costs incurred by RBR as a result of any representations made by the Client to the Temporary Worker, including but not limited to any loss or costs incurred as a result of any personal grievance or other employment-related claims, and including any claim which may arise under common law in relation to any injury suffered by the Temporary Worker during the Engagement, including costs on a solicitor-client basis. Any liability under this Clause 49 will be deemed to be a debt due and payable by the Client to RBR.

50. Temporary Workers are not covered under RBR's insurance policies for any loss, costs or damage. The Client will obtain and maintain adequate insurance to cover any circumstances that may arise in relation to Temporary Workers. The Client will produce any certificates of insurance to RBR on RBR's request.

PRIVACY, CONFIDENTIALITY AND INTELLECTUAL PROPERTY

51. "Personal Information" has the same meaning as provided in section 7 of the Privacy Act 2020 (**Privacy Act**).
52. The Client will comply with all obligations under the Privacy Act 2020 when collecting, using or disclosing any Personal Information of any Temporary Workers or Candidates.
53. The Client will immediately notify RBR of any Privacy Breach (as defined in section 112 of the Privacy Act 2020) relating to any Candidate or Temporary Worker.
54. The Client will not use or disclose, or permit to be used or disclosed, any information relating to RBR's business or any Temporary Worker or Candidate that RBR considers confidential without RBR's prior written consent.
55. RBR will collect private information about the Client for the purpose of providing Candidates and/or Temporary Workers and/or other services under these Terms. This information will be treated as private and confidential and will not be disclosed to any third party unless:
- 55.1. RBR is required to do so by law; or
 - 55.2. It is necessary to do so in order to provide services to the Client; or
 - 55.3. The Client has requested or consented to disclosure.
56. Notwithstanding Clause 55, the Client agrees to disclosure of its private information to third parties for the purpose of performing a credit check or for recovering any monies owing from the Client to RBR. This may include disclosure of Personal Information of the Guarantor and private information of the Client to a debt recovery agency or to RBR's nominated lawyers.
57. If the Client does not provide the information requested, RBR may refuse to provide some or all of the requested services.
58. At any time the Client may request to see and/or alter personal information held by RBR about them and RBR will comply with this request.
59. No intellectual property is conveyed or vests in the Client or any other person pursuant to these Terms.

DEFAULT

60. Where the Client is in default under these Terms, or any other contract between the Client and RBR, or breaches any of these Terms, RBR may:
- 60.1. Immediately commence legal action against the Client and/or Guarantor without any further notice or final demand; and/or
 - 60.2. Require security for such obligations to its full satisfaction before any further Temporary Workers or Candidates are provided to the Client; and/or
 - 60.3. Charge interest pursuant to Clause 41; and/or

60.4. Cancel this or any other contract between the parties without prejudice to any rights of RBR to recover outstanding monies.

61. Without prejudice to its other remedies, RBR shall be entitled to cancel this and any other contract for services with the Client in the following circumstances:
- 61.1. If the Client becomes insolvent or is adjudicated bankrupt; or
 - 61.2. If a receiver is appointed in respect of the assets of the Client; or
 - 61.3. If the Client no longer carries on business or threatens to cease carrying on business; or
 - 61.4. If an arrangement with the Client's creditors is made or is likely to be made; or
 - 61.5. If the ownership or effective control of the Client is transferred or the nature of the Client's business is materially altered.
62. The Client will pay all costs incurred by RBR, including costs on a solicitor-Client basis and debt collectors' costs incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms.

DISPUTE RESOLUTION

63. RBR and the Client agree that where disputes arise from this Agreement (**Dispute**), the parties will endeavour to resolve the matter with negotiation prior to resorting to formal dispute resolution (**Informal Discussion**).
64. If the Dispute has not been resolved within ten Business Days after the commencement of Informal Discussions, the Dispute must be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 (**Arbitration Act**) or any other statutory provision then relating to arbitration in New Zealand.
65. If the parties are unable to agree on an arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act are to be read subject to this and varied accordingly.
66. Notwithstanding anything in this Clauses 63-66, a party may at any time begin court proceedings in relation to a dispute or claim arising in connection with these Terms where that party seeks urgent interlocutory relief.

ENTIRE AGREEMENT

67. These Terms contain all of the terms, representations and warranties made between the parties and supersede all prior discussions and agreement covering the subject matter of these Terms.
68. No variation can be made to these Terms of Business without the written consent of RBR. RBR reserves the right to amend the Terms of Business by providing 30 days' notice in writing to the Client.

GOVERNING LAW AND JURISDICTION

69. These Terms, and any dispute relating to these Terms, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms.

SEVERABILITY

70. If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on the Client.

FORCE MAJEURE

71. RBR shall not be liable for any delay, alteration, or failure to perform its obligations under these Terms resulting from any: act of God; earthquake, flood, fire, storm and adverse weather conditions or natural events for which provision could not reasonably have been made; pandemic or epidemic; interruption or failure of any utility services, or unpredictable delays which could not reasonably be prevented in delivery of materials, equipment or services necessary for the compliance by that party with an obligation under this agreement; sabotage, riot, civil disturbance, explosion, terrorist acts, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); act or omission of any authority not directly or indirectly arising from any act or omission by that party, its agents, representatives or advisors; governmental restraint, restriction, sanction, expropriation, prohibition, intervention, direction or embargo; strike, lockout, work stoppage or other labour hindrance; and any other event beyond RBR's control (**Force Majeure**).
72. The performance of RBR's obligations will be suspended for the period of any delay due to the Force Majeure. Any additional costs incurred by RBR due to a Force Majeure will be payable by the Client.

ACKNOWLEDGEMENT

73. The Client acknowledges that it has received a copy of these Terms.
74. These Terms remain in effect for all future Engagements, until superseded by any later version provided by RBR.
75. The Client further acknowledges that it has been advised it should seek independent legal advice before accepting these Terms. This is the Client's responsibility alone and if legal advice is not sought then the Client acknowledges it has waived its right.