

CERTUS RECRUITMENT AUSTRALIA PTY LTD TERMS AND CONDITIONS OF BUSINESS

1. Scope of this Agreement

- 1.1. This Agreement shall apply to:
- a) any Business proposed or undertaken by Certus for the Client; and
 - b) the employment, engagement or other use by the Client of a Candidate Introduced by Certus.
- 1.2. In the absence of written confirmation, any conduct by the Client in relation to a Candidate (including the use by the Client of any curriculum vitae provided by Certus (or the details therein) or the employment or engagement of any Candidate Introduced by Certus) will constitute acceptance by the Client of these Terms and Conditions.

2. Permanent & Fixed Term Placements

2.1. **The Placement**

- a) Certus shall use reasonable skill and care in the sourcing and Introduction of Candidates to the Client.
- b) The Client shall provide all information reasonably necessary to enable Certus to assess the suitability of a Candidate for a Placement.
- c) Certus will make every reasonable effort to ensure that a Candidate suits the Client's notified requirements. Insofar as a Candidate or third parties provide details relating to the Candidate, Certus shall use reasonable endeavours to ensure these details are correct but provides no warranty to such effect. Certus will not be liable to the Client for any loss or damage because of such incorrect information and the Client acknowledges that it is responsible for undertaking its own investigations to verify any information is correct.
- d) Where the Client has instructed Certus to headhunt a Candidate on the Client's behalf, the Client shall indemnify and keep Certus indemnified against all loss, or expense incurred by Certus because of claims made in connection with such instruction.
- e) Certus gives no representation or warranty that any Candidate is or will be willing and/or available to accept any Placement.
- f) Certus will not be liable for losses, liabilities, costs and expenses incurred by the Client arising from the Candidate's acts or omissions including their acts or omissions in the performance of their employment with the Client.
- g) Certus acknowledges that the final decision to employ or engage the Candidate rests with the Client.

2.2. **Fees**

- a) The fees payable by the Client for a Placement are calculated as a percentage of the Candidate's Salary Package as per the table below:

Salary Package	% Fee
0-\$199,999	20%
\$200,000 +	25%

- b) For a Fixed Term Placement or a part-time position, the fees payable shall be based on the equivalent annual full time Salary Package as per clause 2.2 (a)
- c)

2.3. **Retained Searches**

- a) Where the Client requests a retained search, an agreed fee is payable by the Client and will be invoiced in two stages: 33% on Certus's agreement to undertake the Business, payable immediately, and the balance (adjusted as applicable based upon the agreed remuneration package) on confirmation of acceptance of an offer of employment from the Client by the Candidate.
- b) If the Client withdraws the Placement before the Candidate commences, all three stages of fees specified in clause 4.1 will be payable immediately. If within 3 calendar months of such withdrawal, the Client instructs Certus to fill an identical Placement, a credit will be given against such fees.

2.4. **Fixed Term Extensions & Conversions**

- a) For Fixed Term Placements, if:
 - a) the original fixed term is extended a further fee will be payable in accordance with clause 3.2; or
 - b) the Candidate accepts permanent employment with the Client, a further fee will be payable in accordance with clause 2.2 (a).
 In each case, the Client must notify Certus immediately.

2.5. **Introductions**

- a) The Client shall inform Certus and shall pay the fee that would have been due to Certus for a Placement where:
 - a) although no Placement occurs initially, an Introduced Candidate is employed or engaged by the Client within 12 calendar months of the date of the Introduction;
 - b) an offer of employment is made by the Client and accepted by the Candidate, within 12 calendar months of date of introduction, but (through no fault of the Candidate) no employment or engagement results; or
 - c) irrespective of whether a Placement resulted from the Introduction of a Candidate by Certus to the Client, the Candidate is Introduced by the Client to a third party within 12 calendar months of the date of Introduction by Certus.
- b) The Client must notify Certus immediately if a Candidate accepts employment with the Client or a third party to whom the Client has referred the Candidate including the start date of the employment and full details of the Salary Package agreed.

2.6. **Replacement Guarantee**

- a) No rebate of fees shall be made. Should the engagement of a Candidate terminate within a period of 12 weeks (including the Candidate's period of contractual notice) from the start of a Placement, Certus shall seek a replacement Candidate on the condition that:
 - a) the initial Candidate leaves of his/her own volition and not due to any redundancy measures, change in job description or

- change in work conditions;
- b) Certus's invoice has been settled in accordance with this Agreement;
- c) the Client has complied with its obligations to the initial Candidate including its obligations under any relevant law;
- d) the request is given exclusively to Certus to replace the initial Candidate;
- e) the nature of the replacement role is the same as the initial Placement; and
- f) Certus is informed in writing that the initial Candidate is no longer to be engaged by the Client within 7 days of their termination date.
- b) Certus offers its replacement guarantee on the initial Candidates placed. It does not offer its replacement guarantee for the replacement Candidate, a Fixed Term Placement or for a Candidate that was originally placed with the Client on a temporary basis.
- c) No additional fees will be payable by the Client in relation to a replacement Candidate, however, if the Salary Package of the replacement Candidate increases from the initial Candidate, the invoiced amount will be adjusted accordingly.
- d) The replacement guarantee will be valid for a period of 3 months from the date of termination of the initial Candidate, after which Certus is not obliged to offer such guarantee or continue to seek a replacement candidate.

3. **Supply of Temporary Workers**

3.1. **The Assignment**

- a) Certus shall use reasonable skill and care in the sourcing, Introduction and supply of Temporary Workers as required by the Client.
- b) Certus shall make every reasonable effort to ensure that a Temporary Worker suits the Client's notified requirements. Insofar as a Temporary Worker or third parties provide details relating to the Temporary Worker, Certus shall use reasonable endeavours to ensure these details are correct but provides no warranty to such effect. Certus will not be liable for any loss or damage because of such incorrect information and the Client acknowledges that it is responsible for undertaking its own investigations to verify any information is correct.
- c) Certus gives no representation or warranty that any Temporary Worker is or will be willing and/or available to accept any Assignment.
- d) For an Assignment, the Client shall approve timesheets on a weekly basis. Signature or e-mail approval of a timesheet by a Client shall be deemed evidence of satisfaction with a Temporary Worker and an agreement to pay for the hours or days recorded on a timesheet. Online timesheets (if applicable) will require online approval by the Client on an equivalent basis.
- e) The Client is responsible for the direction, control and supervision of the Temporary Worker for the duration of the Assignment.
- f) Certus will not be liable for losses, liabilities, costs and expenses incurred by the Client or their respective employees or clients arising from the Temporary Worker's acts, errors or omissions for the duration of an Assignment.
- g) An Assignment commences when the Temporary Worker begins work for the Client and continues until the Temporary Worker has completed work on the last day of the Assignment.
- h) The Client acknowledges that the final decision to engage any Temporary Worker to undertake an Assignment rests with it.

3.2. **The Fees**

- a) Prior to the start of the Assignment the Parties will agree the hours to be worked by the Temporary Worker during the Assignment and the hourly or daily rate that the Client will pay to Certus.
- b) Where a Temporary Worker works more than the hours agreed for the Assignment, the Client will pay to Certus an overtime rate, as agreed by the Parties.
- c) Certus will invoice the Client on a weekly basis for the hours or days worked by the Temporary Worker.
- d) Certus will promptly pay all wages due to the Temporary Worker, Workcover premiums, superannuation contributions and payroll tax (if applicable) for the Temporary Worker.
- e) Certus reserves the right to increase the hourly rate or daily rate and overtime rate in accordance with any increase in any award, wage rate or statutory charge governing the remuneration to be paid by the Temporary Worker.
- f) In addition to clause 3.5, Certus may adjust the hourly rate, daily rate and overtime rate annually on 1st January in line with the increase in the CPI. The adjustment will be based on the annual percentage change specified in the latest published CPI (e.g. September Quarter of the prior year to September Quarter of the current year).
- g) A fee shall be due and payable under this Agreement regardless of whether the Temporary Worker was previously known to the Client on the date of Introduction.

3.3. **Employment or Engagement by the Client**

- a) If:
 - a) No Assignment occurs initially, and an Introduced Temporary Worker is employed or engaged by the Client in any capacity within 12 calendar months from the Introduction;
 - b) the Temporary Worker is Introduced (directly or indirectly) by the Client to a third party who employs or engages the Temporary Worker to work in any capacity within 12 calendar months of the initial Introduction (irrespective of whether an Assignment occurred) or within 12 calendar months from the end of the Assignment; or
 - c) during the Assignment or within 12 calendar months of the end of the Assignment the Client offers work directly to the Temporary Worker; then:

the Client will inform Certus, provide Certus with full details of the remuneration paid to the Temporary Worker and pay Certus a fee of 25% of the base annual salary plus superannuation and guaranteed bonus offered to the Temporary Worker.

3.4. **Termination of Assignments**

- a) Either Party may terminate the Assignment with notice. The notice period to be given by both Parties will be agreed by the Parties in writing (or via email) prior to the commencement of the Assignment or, in the absence of such agreement, will be 30 days.
- b) The Client may give Certus notice to terminate the Assignment of a Temporary Worker immediately if a Temporary Worker commits any act of dishonesty, serious misconduct or gross negligence.
- c) Certus (and not the Client) will advise the Temporary Worker that the Assignment has been terminated and for the avoidance of doubt the Client will be responsible for any claims by the Temporary Worker where it fails to follow this process.
- d) If a Temporary Worker's Assignment is terminated for whatever reason, the Client shall pay Certus for the time worked by the Temporary Worker (including notice) and shall submit timesheets to comply with this clause up to the termination.
- e) The Client may elect to make payment in lieu of the Temporary Worker's notice.

3.5. **Other Obligations Regarding the Temporary Workers**

- a) The Client will comply with the obligations placed upon them by the relevant Work Health and Safety laws and regulations to ensure as far as reasonably practicable the health and safety of the Temporary Workers. The Client will consult, cooperate and coordinate with Certus on health and safety matters for Temporary Workers. This includes but is not limited to allowing Certus or its agents reasonable access on notice to any workplace where the Temporary Worker will perform the Assignment.
- b) The Client will notify Certus in writing of the relevant client industry award applicable to the Temporary Worker.

4. Payment & Additional Costs

- 4.1. Additional costs will only be incurred with the Client's approval and charged at rates agreed. These will be payable by the Client, even if the Candidate is not placed.
- 4.2. The Introduction Fee will be invoiced when a Candidate accepts an offer of employment. The invoice becomes payable within 7 days of the Candidate's start date.
- 4.3. The Client is deemed to have accepted the invoice if no dispute is raised within 7 days of the date of invoice. Overdue payments are subject to interest on the amount unpaid from the due date to the date of payment at a daily rate 2.5% per annum above the base rate of Commonwealth Bank of Australia.
- 4.4. A dispute will not affect payment of non-disputed fees on the same invoice or the payment of any other invoices due by the Client and the Client shall have no right of set off.
- 4.5. All fees are quoted on a GST exclusive basis. GST shall be charged on fees due at the prevailing rate and on such aspects of any other charges as is required by law.
- 4.6. Any costs incurred by Certus in recovering amounts overdue shall be payable by the Client.

5. Confidentiality

- 5.1. The Parties will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing Party, (including this Agreement and details of any Candidate), in confidence and will not disclose such information to any third party or regulatory body 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.
- 5.2. All information obtained or held by the Parties regarding Candidates shall be maintained in accordance with the Privacy Act 1988 (CT) and the Australian Privacy Principles contained in schedule 1 of the Privacy Act 1988 (CT).

6. General

- 6.1. To the maximum extent permitted by law, Certus shall not be in any way liable to the Client for any loss or damage arising out of the provision of the service by Certus pursuant to this Agreement or in any way connected therewith.
- 6.2. Neither Party shall be liable to the other under or in connection with this Agreement for any indirect or consequential loss, loss of profits or loss of revenue.
- 6.3. Nothing in this Agreement limits any warranty or right imposed by statute or regulation to the extent that it cannot lawfully be limited, or limits either party's liability for its fraud (including fraudulent misrepresentation).
- 6.4. The Client will not, during the course of this Agreement and for a period of 12 calendar months thereafter (either on its own account or for any other individual or organisation), directly or indirectly induce, entice or solicit away or try to induce, entice or solicit away from Certus any individual who is an employee, director or consultant of Certus.
- 6.5. If the Client employs or engages any person in breach of the terms of this Agreement, the Client shall pay to Certus on demand the sum equivalent to 35% of the Salary Package of such person. The Parties agree that this is a genuine pre-estimate of loss.
- 6.6. If a clause is held by a Court to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other terms of this Agreement.
- 6.7. If a Party is prevented in the performance of this Agreement by circumstances that are beyond the control of a Party (acting reasonably) then that Party will not be liable for what would otherwise have been a breach of its obligations under this Agreement.
- 6.8. No failure or delay by either Party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of any clause will be effective unless confirmed in writing to the other Party and in the case of Certus, by a director of Certus.
- 6.9. This Agreement shall be governed by the laws of Victoria, Australia. The Parties submit to the nonexclusive jurisdiction of the courts of Victoria, Australia.
- 6.10. Those clauses which, by their nature, are intended to continue to have effect following termination of this Agreement shall survive and continue to bind the Parties.
- 6.11. All references to "\$" are to Australian dollars.

7. Definitions

- 7.1. The following words are defined as follows:
 - a) "**Assignment**" means the temporary role being or to be performed by a Temporary Worker for the Client;
 - b) "**Business**" means work performed by Certus in relation to permanent or Fixed Term Placements including, but not limited to, Certus receiving instructions from the Client for a Placement, long/short listing of Candidates, introducing a Candidate, Certus's arrangement of or conducting interviews with Candidates or any other act in the sourcing or supply of a Candidate;
 - c) "**Candidate**" means an individual Introduced by Certus to the Client;
 - d) "**Client**" means you or any of your Related Bodies Corporate (as defined in section 50 of the Corporations Act 2001);
 - e) "**CPI**" means Consumer Price Index, All Groups CPI: Weighted average of eight capital cities, published by the Australian Bureau of Statistics (ABS), or any replacement category published by the ABS from time to time.
 - f) "**Certus**" means Certus Recruitment Australia Pty Ltd.
 - g) "**Fixed Term Placement**" means any Candidate Introduced to the Client who becomes employed or engaged directly by the Client on a fixed term contract.
 - h) "**GST**" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999.
 - i) "**Introduced**" means (i) the sending of a Candidate's CV or other information which expressly or impliedly identifies the Candidate (ii) the arrangement of an interview whether at a face-to-face meeting, by telephone or by web/video conference with a Candidate; or (iii) the introduction by whatever means by Certus to the Client or the Client to a third party (as applicable) that enables the Candidate to be identified and "Introduction" and "Introduce" shall be construed accordingly;
 - j) "**Placement**" means a position or role to which a Candidate may be or is appointed on a permanent or fixed term basis with the Client and includes a Fixed Term Placement;
 - k) "**Salary Package**" means the annual anticipated gross remuneration package for a Placement, which includes gross annual salary, applicable benefits (including superannuation), commission, bonuses, allowances and joining inducements. The provision of a car is valued at \$25,000 per annum;
 - l) "**Temporary Worker**" means any individual Introduced by Certus to the Client and / or who undertakes an Assignment.
- 7.2. References to the "Parties" means Certus and the Client and their respective successors and permitted assignees. "Party" shall be construed accordingly.