

## TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF

## THE PARTIES

- (1) Wynden Stark Limited (ABN. 73600564047) trading as GQR Global Market of 52 Phillips Street, Sydney, NSW, 2000 (**"the Agency"**).
- (2) Any person, firm or company to whom the Candidate is Introduced (**"the Client"**). For the avoidance of doubt the Client shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Candidate is Introduced.

## 1. DEFINITIONS

1.1. In these Terms the following definitions apply:

**"Cancellation Fee"** means the fee payable by the Client to the Agency where the Client either (a) withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer or (b) withdraws an offer of Engagement made to the Candidate after the Candidate has accepted the offer, but where the Candidate has not yet commenced the Engagement, and which is calculated in accordance with clause 3.10;

**"Candidate"** means the person Introduced by the Agency to the Client, whether the Client knew of that person before the Introduction or not, for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency's own staff. For the avoidance of doubt, in the event of multiple hires a fee in accordance with these Terms will be due for every individual Candidate hired by the Client;

**"Engagement"** means the Engagement (including the Candidate's acceptance of the Client's offer), employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement or joint venture; or any other Engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

**"Introduction"** means (i) the passing to the Client of a curriculum vitae/resume or information which identifies the Candidate including that which is provided to the Client on a speculative basis or (ii) the Client's interview of a Candidate (in person, by telephone or by any other means); and, in either case, which leads to an Engagement of the Candidate; and "Introduces" and "Introduced" shall be construed accordingly;

**"Fee"** means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;

**"Losses"** means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

**"Remuneration"** includes gross base salary, wages or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car, bonus buy-outs, dividends, profit shares, stock, stock options, stock buy-outs and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party;

1.2. Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

- 2.1. These terms of business ("**the Terms**") constitute the contract between the Agency and the Client for the Introduction of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a Director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

## 3. NOTIFICATION AND FEES

- 3.1. The Client shall:
  - 3.1.1. notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
  - 3.1.2. notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and
  - 3.1.3. pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.2;
- 3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of 18 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).
  - 3.2.1 The Introduction Fee shall be payable within 21 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement.
- 3.3. The Introduction Fee is calculated as 40% of the Candidate's Remuneration applicable during the first 12 months of the Engagement.
- 3.4. Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.
- 3.5. Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 18 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (i) the extended period of Engagement or (ii) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.
- 3.6. Where the Client and the Agency have agreed that the Client will be liable for expenses incurred in connection with an Introduction, including but not limited to Candidate or Agency staff's essential travel, the Agency will render an invoice to the Client for such expenses once either a) the Candidate has commenced the Engagement or b) the Client ends the recruitment process for the Candidate. For the avoidance of doubt, the Client will be liable for the agreed expenses regardless of whether the Candidate commences an Engagement.
- 3.7. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 3.8. All fees are exclusive of GST. GST is charged at the standard rate on fees, where applicable. The Client is responsible for paying all and any GST in relation to the fees.
- 3.9. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 2003 on invoiced amounts unpaid by the due date at the statutory rate of interest, as of the date of the invoice, from the due date until the date of payment.

- 3.10. If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it either (a) prior to the Candidate accepting the Engagement or (b) after the Candidate has accepted the offer, but where the Candidate has not yet commenced the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee equal to 10% of the Introduction Fee calculated in accordance with clause 3.3, had the Engagement commenced.
- 3.11. In the event that any Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Agency or within 6 months of leaving the Agency, the Client shall be liable to pay the Agency a fee equivalent to the Introduction Fee calculated in accordance with clause 3.3

#### 4. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a **"Third Party Introduction"**. If that Third Party Introduction results in an Engagement of the Candidate by the third party within 18 months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee calculated in accordance with clause 3.3.

#### 5. SUITABILITY CHECKS

- 5.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
- 5.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
  - 5.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
  - 5.1.3. confirm that the Candidate is willing to work in the position.
- 5.2. Notwithstanding clause 5.1 the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
- 5.2.1. taking up any references provided by the Candidate before Engaging the Candidate;
  - 5.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 5.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 5.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 5.3. To enable the Agency to comply with its obligations under clause 5.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
- 5.3.1. the type of work that the Candidate would be required to do;
  - 5.3.2. the location and hours of work;
  - 5.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
  - 5.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 5.3.5. the date the Client requires the Candidate to commence the Engagement;
  - 5.3.6. the duration or likely duration of the Engagement;
  - 5.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
  - 5.3.8. the intervals of payment of Remuneration; and
  - 5.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

#### 6. CONFIDENTIALITY

All information relating to a Candidate is confidential and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of this clause 6 when receiving and processing information relating to a Candidate, at all times. In addition information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

#### 7. LIABILITY

- 7.1. The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with

the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

- 7.2. The Client shall indemnify and keep indemnified the Agency, its directors, officers, employees and agents against all action, debt, costs, expenses, claims, demands, liability, judgement or order either at law or equity or arising out of the provisions of any statute, award, order or determination (the “**Claims**”) arising from the Client’s failure to comply with any of the provisions of these Terms.

## **8. NOTICES**

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

## **9. NO WAIVER**

Neither the Agency nor the Client waive a right, power or remedy if it fails or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. Any waiver or a right, power or remedy must be in writing and signed by either the Agency or Client, whichever party is giving the waiver.

## **10. SEVERABILITY**

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

## **11. GOVERNING LAW AND JURISDICTION**

These Terms are governed by the laws of New South Wales and are subject to the exclusive jurisdiction of the Courts of New South Wales.