



TECH 5 RECRUITMENT LIMITED TERMS FOR THE SUPPLY OF SERVICES

1. APPLICATION

- (a) Unless otherwise agreed in writing by Tech 5 Recruitment Limited (**Tech 5**), the following terms (**Terms**) will apply in respect of the provision of any services by Tech 5 to any customer (**Customer**) including without limitation:
- (i) the provision of temporary staff (**Temporary Staff**); and
 - (ii) recruitment services for the provision of permanent employees (**Permanent Employees**) (**Permanent Placement Services**), (being jointly and severally referred to as the **Services**).
- (b) The Customer acknowledges that the supply of all Services by Tech 5 will be subject to these Terms.
- (c) If there is any inconsistency between these Terms and any other written agreement between the Customer and Tech 5, these Terms will prevail unless expressly agreed in writing between the Customer and Tech 5.
- (d) Tech 5 may amend these Terms at any time. The amended Terms will apply in respect of any Services that are provided by Tech 5 following the date the amended Terms are notified to, or otherwise agreed to, by the Customer.

2. ORDERS

- (a) The Customer may request the provision of Services by Tech 5 from time to time (**Order**). The form of any Order will be as directed by Tech 5 from time to time. Each Order will constitute an offer by the Customer which will only be accepted by Tech 5 by written confirmation of the Order to the Customer or by the performance by Tech 5 of the Services the subject of the Order.
- (b) The Customer acknowledges that in respect of the provision of Temporary Staff, and/or Permanent Placement Services, the Customer will be required to provide the following information as part of placing any Order with Tech 5:
- (i) details of the duties of the Temporary Staff or Permanent Employee;
 - (ii) the location where the Temporary Staff or Permanent Employee is required to work;
 - (iii) details of the hours to be worked;
 - (iv) details of all relevant health and safety policies and procedures; and
 - (v) such other information as is reasonably required by Tech 5 from time to time.
- (c) Tech 5 may, in relation to any Order, accept the Order or decline to accept the Order in whole or in part, in its sole discretion.

3. PRICE AND PAYMENT

- (a) The price payable for any Services supplied by Tech 5 to the Customer (**Price**) will be:
- (i) the price agreed between the parties; or
 - (ii) in the absence of any agreement between the parties, Tech 5's standard prices applicable for the Services at the time the relevant Order is accepted by Tech 5.
- (b) The Price will be payable by the Customer:
- (i) on or before the date, or dates, agreed between the parties and in the manner specified or accepted by Tech 5; or
 - (ii) in the absence of agreement, immediately upon demand by Tech 5 (**Due Date**).
- (c) Any Price submitted by Tech 5 to the Customer is subject to alteration by Tech 5, in its sole discretion, at any time prior to acceptance by the Customer. In addition, Tech 5 reserves the right to alter the Price agreed with any Customer by notice to the Customer to reflect any increase in the costs incurred by Tech 5 in supplying the Services to the Customer that is beyond the reasonable control of Tech 5 (including without limitation any taxes, foreign exchange fluctuations, duties and the provision of any laws enacted after the date of acceptance of any Order by Tech 5).
- (d) Unless expressly stated in writing all amounts quoted by Tech 5:
- (i) will be deemed to include all statutory obligations in respect of any Temporary Staff; and
 - (ii) will exclude all GST, time and a half or day in lieu consumables and reasonable out of pocket expenses incurred by Tech 5 in providing the Services (including any travel or accommodation expenses or fringe benefit tax in relation to the provision of any Temporary Staff).
- All GST, time and a half or day in lieu, the costs of consumables and out of pocket expenses will be payable by the Customer at the same time as the Price and in addition to the Price.
- (e) If the Customer fails to pay any amount due to Tech 5 on or before the relevant Due Date, Tech 5 will be entitled to charge interest on any amount overdue for payment by the Customer from the Due Date until the date payment of that amount is received in full, together with any costs (legal or otherwise) and collection costs incurred by Tech 5 for the enforcement of payment of such overdue amounts. Interest will be charged on any overdue amount at the rate of 2% per calendar month and will be compounded monthly.

4. ACKNOWLEDGMENTS

- (a) The Customer acknowledges and agrees that:
- (i) in respect of any Temporary Staff:
 - A) all Temporary Staff are employees, agents or contractors of Tech 5 and will remain employees, agents or contractors of Tech 5;
 - B) the Temporary Staff will only work between the hours agreed between Tech 5 and the Customer or such other hours as agreed between the Temporary Staff and the Customer from time to time provided that the Customer will not request or allow any Temporary Staff to perform any Services on a public holiday as defined in the Holidays Act 2003 unless previously approved in writing by Tech 5 (and where it will be a condition of Tech 5's consent that the Customer will meet all additional liabilities incurred by Tech 5 as a result of the Temporary Staff performing any Services on a public holiday);
 - C) Tech 5 will be responsible for administering all of the Temporary Staff's leave entitlements (eg annual and sick);
 - D) the Customer and any person or entity that can rightfully be considered to be controlled by or associated with the Customer (Associate) will not offer employment to the Temporary Staff during the provision of Services to the Customer or during the period of 12 months thereafter without Tech 5's prior written approval (provided that if the Customer breaches this clause, the Customer will pay to Tech 5 a fee equivalent to the placement fee calculated in accordance with clause 4(a)(ii)); and
 - E) the Customer will not take any disciplinary action against the Temporary Staff and any issues or concerns will immediately be referred to Tech 5;
 - F) the Customer's sole remedy in respect of any Temporary Staff will be as set out in clause 5;
 - G) the Customer will prepare and provide to Tech 5 a weekly timesheet, signed on behalf of the Customer setting out all hours worked by the Temporary Staff; and
 - H) if the Customer fails to complete and provide a weekly timesheet (or provide a record in any other such form as agreed to by Tech 5) signed on behalf of the Customer on a weekly basis in accordance with any requirements specified by Tech 5, Tech 5 will invoice the Customer the greater of the maximum hours specified as part of any Order or the number of hours stated by the Temporary Staff as being worked. A late filing fee of \$50 per timesheet may also apply.
 - (ii) In respect of any Permanent Employee, if any prospective employee (**Prospective Employee**) is offered employment by the Customer or Associate of the Customer (being associated companies, directors, shareholders, suppliers, clients, sub-contractors) within 12 months of the introduction or completion of that Prospective Employee by Tech 5 to the Customer, or the completion of any temporary assignment or the provision of any Services by the Prospective Employee to the Customer, the Customer will pay to Tech 5 a placement fee equal to the greater of:
 - A) 15% of the total annual remuneration paid by the Customer to the Prospective Employee (inclusive of all benefits) or \$4,000 plus GST in each case for any Prospective Employee that Tech 5 has sourced from within New Zealand; or
 - B) 25% of the total annual remuneration paid by the Customer to the Prospective Employee (inclusive of all benefits) or \$15,000 plus GST in each case for any Prospective Employee that Tech 5 has sourced from offshore.
- (b) Both Tech 5 and the Customer acknowledge that they must comply with the health and safety requirements and obligations under the Health and Safety at Work Act 2015 (**HSWA**) and all related legislation including all regulations and codes of practice approved under the HSWA (**Health and Safety Legislation**). The Customer must ensure that all workers at a place where work is being carried out or is customarily carried out under these Terms, or where a worker is or is likely to be while carrying out work under these Terms (each a **"Workplace"**) agree to comply with all Health and Safety Legislation.
- (c) Without limiting in any way the Customer's general and specific obligations under Health and Safety Legislation, the Customer will:
- A) provide all Temporary Staff with a safe Workplace (including the means of entering and exiting the Workplace and anything that arises from the Workplace) that complies in all respects with the Health and Safety Legislation, the Employment Relations Act 2000 and the Human Rights Act 1993 and will ensure that all Temporary Staff receive appropriate health and safety and induction training specific to the place at which any Temporary Staff are required to work;
 - B) ensure so far as is reasonably practicable the health and safety of any Temporary Staff, and ensure so far as is reasonably practicable that the health and safety of any other parties that are at the Workplace, including visitors, contractors, subcontractors, service providers, the public, and visitors, is not put at risk by work carried out under these Terms;
 - C) have in place a drug and alcohol policy and ensure that no persons undertaking work at the Workplace are under the influence of alcohol, cannabis or other illegal or prescription drugs whilst Temporary Staff are performing work under these Terms;
 - D) be responsible for checking and ensuring that all Temporary Staff are trained in the relevant health and safety requirements applicable and have all of the necessary skills, qualifications and experience to use

and perform any job that the Customer requires the Temporary Staff to perform and be responsible for supervising, inducting and providing guidance to the Temporary Staff at all times;

- E) ensure that all equipment used by Temporary Staff in carrying out work under these Terms is in good operating condition, complies with Health and Safety Legislation and is used only for the specific purpose for which such equipment was intended;
 - F) provide to Tech 5 upon request by Tech 5 all documents which Tech 5 reasonably requires access to, such as, for example, a health and safety management system, a site-specific safety plan; a completed risk and hazard identification and control register; details of any health and safety accidents or incidents, including notifiable events (as defined in HSWA) and corrective actions taken; and any associated job safety and environmental analysis;
 - G) be responsible for notifying Tech 5 of all health and safety accidents and incidents, including notifiable events (as defined in HSWA), and notifying any applicable statutory body of any notifiable events as required in the Health and Safety Legislation;
 - H) permit Tech 5 or an independent third party or agent at any time to conduct an inspection of any place of work at which any Temporary Staff are working or may be required to work, and provide any reasonable assistance to Tech 5 or any independent third party, for the purposes of verifying the Customer's compliance with this clause or for the purposes of a health and safety audit;
 - I) allow Tech 5 in its sole discretion, and without liability to the Customer, to require any Temporary Staff to cease the performance of any work that the Customer requires any Temporary Staff to perform and to vacate any work site, if Tech 5 in its reasonable opinion believes there is a risk to the health and safety of Temporary Staff or any other person. No work will recommence until Tech 5 is satisfied that any health and safety issues have been rectified; and
 - J) comply with any direction or requirement of Tech 5 or its authorised representatives to ensure so far as is reasonably practicable that Temporary Staff or any other person at the Workplace is not harmed by or as a result of work carried out under these Terms; and
 - K) provide all reasonable assistance to Tech 5 in relation to any investigation (whether conducted by the Customer, Tech 5, or a regulatory agency) into a notifiable event at no cost to Tech 5; and
 - L) notify Tech 5 of any improvement or prohibition notice, enforcement proceedings or prosecution under Health and Safety Legislation against the Customer in relation to work done under these Terms.
 - M) to the extent permitted by law, indemnify Tech 5 in respect of any action, claims, damages, penalties, fines or costs brought against or incurred by Tech 5 resulting from any breach by the Customer of its obligations under any Health and Safety Legislation, as a result of any acts or omissions of the Temporary Staff while providing Services to the Customer, and/or any failure by the Customer to comply with its obligations under this clause.
- (d) Tech 5 will:
- A) unless otherwise agreed between the parties in writing, provide to the Temporary Staff basic personal protective equipment (**PPE**) (consisting of a hard hat, eye and ear protection and gloves) and replace any basic PPE that is no longer fit-for-purpose, provided that the Customer will be responsible for providing and replacing all additional or specialised personal PPE and clothing necessary for the performance of the Services and ensuring that the Temporary Staff uses and wears all PPE and clothing required;
 - B) induct all Temporary Staff into Tech 5 and provide information about on-site safety, common hazards, correct use and care of PPE and incident reporting;
 - C) arrange additional training or testing of any Temporary Staff as agreed between the Customer and Tech 5 from time to time e.g. conducting any drugs test or site safe tests. Note Tech 5 shall pay for pre-employment drug testing. Alternate drug testing can be provided at the Customer cost. We recommend The Drug Testing Company;
 - D) periodically visit any places of work where Temporary Staff are required to work to discuss health and safety with site managers and Temporary Staff;
 - E) assist the Customer to ensure that any accident, incident or near-miss that is reported to Tech 5, is managed according to legislative requirements and good practice guidelines; and
 - F) manage any ACC claims and coordinate a return to work plan for any Temporary Staff who is off work with an injury.
- (i) To the extent that they have overlapping duties under the Health and Safety Legislation, the Customer agrees to consult, co-operate and co-ordinate its activities so far as is reasonably practicable with Tech 5.

5. CLAIMS IN RELATION TO SERVICES

The Customer acknowledges that:

- (a) it may terminate the provision of any Temporary Staff at any time by 24 hours prior written notice to Tech 5, provided that the Customer will pay to Tech 5:
 - (i) all fees and charges payable to Tech 5 up to the time of termination of the Temporary Staff; or

- (ii) in respect of any Temporary Staff that is terminated within 24 hours of placing any Order, a minimum charge equal to 4 hours at the hourly rate for the relevant Services;

- (b) subject to the Customer having paid all amounts owing to Tech 5 in accordance with clause 3 and the Customer having notified Tech 5 in writing within 7 days of the date on which the Customer first becomes aware of the Permanent Employee's resignation, if any Permanent Employee resigns or terminates their employment with the Customer, Tech 5 will endeavour at no cost to the Customer to identify and provide a suitable replacement Permanent Employee within a reasonable time provided that if Tech 5 is unable to identify a suitable replacement Tech 5 will pay to the Customer a refund of any fees paid by the Customer in accordance with the following table:

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| (i) Resignation within 0-6 weeks: | Full refund. |
| (ii) Resignation within 7-8 weeks: | 50% refund. |
| (iii) Resignation within 9-12 weeks: | 25% refund. |
| (iv) Resignation after 12 weeks: | Nil refund. |

- (c) the right to terminate the provision of any Services by any particular Temporary Staff in accordance with clause 5(a) above and the right to receive a refund of any fees paid by the Customer in respect of any Permanent Employee in accordance with clause 5(b) above will be the Customer's sole and exclusive remedy in respect of the provision of any Temporary Staff or Permanent Employee by Tech 5.

6. NO WARRANTIES

- (a) Except as expressly set out in writing by Tech 5 in respect of any Services, Tech 5 makes no representation, warranty or undertaking (whether express or implied) in relation to any Services. To the maximum extent permitted by law, all such representations, warranties and undertakings are negated and excluded.
- (b) Where the Customer is acquiring, or holds itself out as acquiring, any Services for the purposes of a business in terms of section 43(2) of the Consumer Guarantees Act 1993 (**Act**), the Customer will not assert or attempt to assert any rights or claims against Tech 5 under the provisions of the Act.
- (c) The Customer acknowledges that it is not relying on Tech 5's skill or judgment as to the suitability or otherwise of the Services for any purpose that was not expressly set out in the Order.

7. INTELLECTUAL PROPERTY

- (a) The Customer acknowledges that, as between the Customer and Tech 5, unless expressly agreed in writing and signed by Tech 5, Tech 5 will own all of the intellectual property rights (whether registered or unregistered) relating to the Services (**Intellectual Property**) and all right and title to any actual or possible development or improvement in the Services or the Intellectual Property (**Developed IP**).
- (b) The Customer acknowledges that it will not at any time acquire any right, title or interest in any kind in the Intellectual Property or the Developed IP.

8. INDEMNITY AND LIMITATION OF LIABILITY

- (a) The Customer will indemnify Tech 5 at all times against any loss, damage or costs suffered or incurred by Tech 5 as a direct or indirect result of a breach by the Customer of any of its obligations under these Terms (including without limitation all dishonour fees, debt collection, collection agency costs and legal costs on a solicitor/client basis).
- (b) The maximum liability of Tech 5 to the Customer under or in connection with these Terms or in relation to any Services will be limited to the amounts payable under clause 5.
- (c) Nothing expressed or implied in these Terms will confer any liability on Tech 5 for any consequential, indirect or special loss, damage, cost or expense suffered or incurred by the Customer as a direct or indirect result of:
 - (i) a breach by Tech 5 of any of its obligations under these Terms; or
 - (ii) the Services being required for any particular purpose not expressly set out in the Order.

9. CANCELLATION OR SUSPENSION BY TECH 5

Notwithstanding any other provision set out in these Terms, Tech 5 reserves the right to cancel or suspend the provision of any Services to the Customer in its sole discretion at any time and without liability to the Customer or to otherwise replace any Temporary Staff allocated to provide any Services to the Customer.

10. PRIVACY ACT/USE OF INFORMATION

The Customer acknowledges that:

- (a) any information provided by the Customer to Tech 5 may be collected and used by Tech 5 for any purpose connected with Tech 5's business including (but not limited to) direct marketing, debt collection and credit reporting or assessment;
- (b) Tech 5 is authorised to carry out credit checks in relation to the Customer, and to provide such information to any external agency or party for credit information and assessment purposes necessary for those purposes;
- (c) Tech 5 and any external agency or party may retain and/or use such information for as long as they see fit; and
- (d) the Customer has a right of access to and correction of any personal information held by Tech 5 in relation to the Customer. Requests for access to any personal information should be sent to the attention of the Privacy Officer, Tech 5 Recruitment Limited, PO Box 1432, Auckland.

11. GENERAL

- (e) Tech 5 and the Customer each acknowledge that these Terms, and any agreement agreed in writing between the parties which expressly refers to these Terms (including any Order which is accepted by Tech 5), contain the entire understanding and agreement between them and that there have been no representations made by either party to the other except as expressed in these Terms or in any agreement agreed in writing between the parties.
- (f) If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- (g) The Customer may not assign, subcontract or hold on trust for any third party any of its rights under these Terms without the prior written consent of Tech 5.
- (h) Where two or more persons or entities are listed as being the Customer, those parties will be jointly and severally liable for the payment of all amounts owing by the Customer to Tech 5.
- (i) Tech 5 will not be liable for any default under these Terms due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or any other event beyond the reasonable control of Tech 5.
- (j) These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.

12. NOTICE OF CLAIM

Notice of any claim by the Customer against Tech 5 must be given by the Customer to Tech 5 within 15 days of the day upon which the existence of such claim became known or should have become known to the Customer, and such notice shall state the amount (as best can be ascertained), nature and grounds of the claim. In default of such notice the Customer shall be deemed to have waived and completely abandoned any such claim and such claim shall not after the expiration of the time stipulated for such notice be allowable or admitted. Time shall be strictly of the essence for this condition.