

## Thompson Cook

This agreement is between Thompson Cook and the Client to establish the terms and conditions on which ThompsonCook shall provide recruitment services to the Client.

### 1. INTERPRETATION

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In these Terms and Conditions:

- 1.1 “ThompsonCook” means Thompson Cook Pty Ltd ACN 607 893 130 and/or Thompson Cook Sydney Pty Ltd ACN 652 763 132
- 1.2 “Client” means any company, firm, individual or organisation that requires or requests the introduction of personnel from ThompsonCook for employment on a permanent or contract basis;
- 1.3 “Candidate” means any individual introduced to the Client by ThompsonCook and includes both employees and contractors;
- 1.4 “Recruitment Fee” means the fee(s) payable by the Client in consideration for services provided by ThompsonCook;
- 1.5 “Recruitment Mandate” means communication verbally or in writing from the Client to ThompsonCook for the introduction of candidates to the Client for a permanent, contracting or fixed term position(s);
- 1.6 “Total Remuneration Package” means the salary package for the candidate inclusive of cash and superannuation

### 2. RECRUITMENT FEES

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- 2.1 For permanent or fixed term Recruitment Mandates the Client shall pay ThompsonCook a Recruitment Fee calculated as a percentage of the Candidate’s annual Total Remuneration Package, as set out below:
  - Up to \$100,000 fixed annual remuneration including cash & superannuation, 18% plus GST

- Greater than \$100,001 fixed annual remuneration including cash and superannuation, 20% plus GST
- 2.2 For contracting Recruitment Mandates, the Client shall pay ThompsonCook the rate agreed at the time of engaging the contractor and agreed in writing with ThompsonCook or the equivalent fee rates outlined for permanent or fixed term recruitment in clause 2.1. The fee rate will apply to any extension or subsequent assignment.
- 2.3 Permanent or fixed term recruitment fees are payable no later than fourteen (14) days from the date shown on the ThompsonCook invoice. Contracting recruitment fees are payable within seven (7) days of the day of the invoice.
- 2.4 ThompsonCook will provide the Client with an invoice:
- a. for permanent Recruitment Mandates, on a Candidate's signing of an employment contract with the Client;
  - b. for fixed term contract Recruitment Mandates, on a Candidate's signing of an employment contract with the Client;
  - c. for contracting Recruitment Mandates on a weekly basis upon confirmation of the hours worked by the contractor by ThompsonCook and the Client.
- 2.5 Unless expressly stated to the contrary, any Recruitment Fee (or other amounts payable under these Terms and Conditions) are exclusive of GST. The Client shall pay any GST applicable to any supply in terms of the GST Act in addition to any fees.
- 2.6 If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

### 3. GUARANTEE

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- 3.1 For permanent Recruitment Mandates in the event that the Candidate or Client terminate the employment contract within 3 months of the Candidate's acceptance of employment, ThompsonCook will use its best endeavours to find a replacement Candidate for the same position as the original permanent Recruitment Mandate at no extra cost to the Client, provided that:
- a. the termination was not due to redundancy measures, a change in the Client's business circumstances, material change to the position description as described by the Client, relocation of work site, changes in conditions of employment, spouse relocation, illness or pregnancy;
  - b. the Client requests ThompsonCook replace the Candidate within 9 months of the termination with an exclusive period of 30 days to seek a replacement Candidate; and
  - c. all of ThompsonCook's invoices have been paid by the Client in accordance with these Terms and Conditions.
- 3.2 For fixed term contract Recruitment Mandates in the event that the Candidate or Client terminate the employment contract prior to the completion date of the fixed term contract, ThompsonCook will provide a credit note to be used by the company for the value of the pro rata fee reflecting the period of the fixed term contract that was not completed by the contractor, provided that:
- d. the termination was not due to redundancy measures, material change to the position description as described by the Client, relocation of work site, changes in conditions of employment, spouse relocation, illness or pregnancy;
  - e. the Client notifies ThompsonCook of termination within 10 business days;
  - f. all of ThompsonCook's invoices have been paid by the Client in accordance with these Terms and Conditions.

#### 4. PAYMENT

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- 4.1 The Client will pay all fees and charges in accordance with the terms of payment on ThompsonCook's invoice. Where fees are paid outside these terms, the Client forfeits their right to a Replacement Guarantee.
- 4.2 For Contracting Recruitment Mandates ThompsonCook reserves the right to terminate the assignment by giving twenty four (24) hours written notice to the client.
- 4.3 If the Client fails to pay any sum under tax invoice when due, ThompsonCook may charge interest on any unpaid sum from time to time at the rate of ten percent (10%) per annum charged on a daily basis.

#### 5. OTHER EXPENSES

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- 5.1 All prior agreed out of pocket expenses incurred by ThompsonCook will be payable by the Client. For example, if ThompsonCook arranges specific advertising, medical checks, travel, specific assessment procedures or other special services for the Client at the Client's request, the Client will pay all costs incurred by ThompsonCook in relation to the provision of those services.

#### 6. APPLICATION AND ACCEPTANCE OF TERMS AND CONDITIONS

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- 6.1 By giving written or verbal instructions to ThompsonCook to supply candidates or by interviewing, engaging, employing or accepting the resume or information of any Candidate introduced by ThompsonCook or by signing these Terms and Conditions, the Client is deemed to have accepted these Terms and Conditions.
- 6.2 These Terms and Conditions (as amended and updated from time to time) apply to every transaction between ThompsonCook and the Client with respect to Candidates.
- 6.3 These Terms and Conditions apply whether the introduction was for a specific Recruitment Mandate or for a speculative approach where the Candidate was seen as appropriate for the Client.

- 6.4 Where a Client is aware of a Candidate on an internal database or through networks, these Terms and Conditions will apply where the Client has not contacted the candidate about an opportunity in the four (4) weeks prior to the introduction by ThompsonCook and the Client has not informed ThompsonCook within two (2) business days from the date of introduction of the Candidate from ThompsonCook that they are aware of the Candidate.

## 7. PROVISION OF SERVICES

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- 7.1 The services which ThompsonCook may provide to the Client include supplying candidates to the Client but will always exclude (unless otherwise agreed in writing) carrying out background and reference checking, including confirmation of academic results, transcripts, police checks and any required work permits.
- 7.2 In completing recruitment services for the Client, ThompsonCook will use reasonable efforts to:
- a. ensure the services are completed by any set date agreed to in writing between ThompsonCook and the Client or otherwise, within a reasonable timeframe from receipt of suitable instructions;
  - b. comply with all applicable laws and/or guidelines specifically governing recruitment services in Australia; and
  - c. exercise a reasonable degree of skill, care and diligence in performing the services.

## 8. SUBSEQUENT EMPLOYMENT

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- 8.1 The Client will pay the Recruitment Fee to ThompsonCook in the event that ThompsonCook introduces a Candidate to a Client and:
- a. that Candidate is either rejected by the Client or, rejects an offer from the Client and is subsequently re-engaged by the Client within a period of 12 (twelve) months; or

- b. the Client withdraws a written offer of employment to a Candidate after acceptance by the Candidate through no fault of the Candidate; or
- c. the Client introduces the Candidate to a third party and the Candidate is subsequently employed by that third party.

8.2 If the Client engages the Candidate on a permanent, contract or temporary basis within twelve months of the original introduction date, the Client will pay a fee to ThompsonCook in accordance with its scale of fees applicable at the time of the initial assignment.

8.2.1 Where ThompsonCook has introduced a Candidate for a contract or fixed term Recruitment Mandate and the Client engages the Candidate for a permanent engagement, no guarantee period is applicable, and the Recruitment Fee will be reduced by the following amounts:

- a. 0 - 3 months of the introduction date, no reduction
- b. 4 - 6 months: 20%
- c. 7–9 months: 30%
- d. 10 - 12 months: 50%
- e. > 12 months: 100%

## 9. LIMITATION OF LIABILITY

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9.1 For a Contracting Recruitment Mandate a Candidate provided by ThompsonCook is deemed to be under the direction, supervision and control of the Client during the term of the assignment. The Client undertakes to supervise the Candidate to ensure proper performance of the Candidate's duties. If the Client has any complaint about the Candidate, such a complaint must be conveyed in writing to ThompsonCook within twenty-four hours. In any event, the Client waives any rights to withhold payment until ThompsonCook has been notified.

9.2 A Contracting Recruitment Mandate may be terminated immediately by the Client or ThompsonCook if the Candidate engages in serious or wilful misconduct, or by

the Client, ThompsonCook or Candidate giving the minimum notice as set out in ThompsonCook's contracting agreement at the commencement of the assignment.

- 9.3 ThompsonCook gives no warranty (either express or implied) in respect of any Candidate introduced, and accepts no liability for any failure of a Candidate to perform or to comply with his/her terms of employment or for any loss, expense, damage or delay howsoever arising from the introduction of the Candidate to the Client or from his/ her engagement by the Client. Specifically, the Client acknowledges its responsibility to satisfy itself as to the suitability of the Candidate.
- 9.4 Insofar as ThompsonCook provides details of a Candidate's medical history, present state of health, previous terms and conditions of employment, names and addresses of previous employers, periods of employment, circumstances in which previous employment terminated, criminal convictions, personal details, ability to work in Australia, visas, work permits, qualifications or education generally, ThompsonCook has no responsibility and will not be liable to the Client for ensuring that the details are correct or accurate.
- 9.5 In the event that any details of information supplied by a Candidate or by a third party on behalf of a Candidate including, but without limitation to, past employers or personal referees that are found to be incorrect or misleading, ThompsonCook will have no liability for any resulting loss, damage or cost which may be suffered.
- 9.6 ThompsonCook, notwithstanding any right the Client may have at law or in equity or otherwise under these Terms and Conditions, shall not be liable for any loss or damages suffered by the Client for any economic loss or consequential loss or damage including but not limited to, loss of profits, loss of opportunity or loss of a Candidate or of the benefit of the services provided by ThompsonCook or any part thereof.
- 9.7 To the extent permitted by law, any liability of ThompsonCook to the Client under these Terms and Conditions shall be limited to the re-completing the Job, or the

payment of the costs of having the Job completed again, at the election of ThompsonCook.

- 9.8 The Client acknowledges that, in agreeing to these Terms and Conditions, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms and Conditions, and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms and Conditions to the fullest extent permitted by law.

## 10. FORCE MAJEURE

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- 10.1 ThompsonCook shall not have any liability under or be deemed to be in breach of these Terms and Conditions for any delays or failures in performance of these Terms and Conditions which result from circumstances beyond its reasonable control.

## 11. NON-CIRCUMVENT

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- 11.1 The Client will not under any circumstances attempt to circumvent ThompsonCook by contacting Candidates verbally or in writing for the purposes of employment unless previously agreed in writing by ThompsonCook.

## 12. PRIVACY

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- 12.1 The Client agrees to comply with the Privacy Act 1988 (Cth) and to use personal information provided by ThompsonCook solely for the purpose of the Recruitment Mandate.
- 12.2 The Client shall not approach Candidate referees or current employer without written confirmation from ThompsonCook.
- 12.3 The Client agrees that it will keep confidential all Candidate information, pricing and other materials supplied by ThompsonCook.

## 13. AMENDMENTS

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- 13.1 ThompsonCook reserves the right to amend these Terms and Conditions. The Client will be sent the amended Terms and Conditions by email.

13.2 The revised Terms and Conditions are deemed accepted if the Client does not object within 14 days following the sending of the email.

#### 14. NATURE OF RELATIONSHIP

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14.1 ThompsonCook will be engaged as an independent contractor. ThompsonCook acknowledges that it is not an agent, employee, director or partner of the Client, and is not authorised to incur any obligation for the Client except with the prior written approval of the Client or as set out in these Terms and Conditions.