



## Terms & Conditions of Service

Thank you for choosing *Michalis & Associates!*

The terms and conditions that are set out in this document (the "Agreement") are the conditions under which Michalis & Associates Pty Ltd (the "Company") will perform the Services for you (the "Customer"). This document therefore constitutes a legally binding contract between the Company and the Customer.

### 1. Engagement

- 1.1. These Terms of Business ("Terms") are between Michalis & Associates Pty Ltd, ABN 76 166 916 445, and yourself, when you accept our services as our client ("you/your").
- 1.2. These Terms will apply to candidates presented by us to you ("candidate(s)").
- 1.3. You will be regarded as having agreed to these Terms if you:
  - a) sign these Terms; or
  - b) give us written or verbal instructions to supply candidate(s); or
  - c) interview a candidate we introduced to you; or
  - d) employ or otherwise engage a candidate we introduced to you; or
  - e) refer a candidate we introduced to you to a third party who then employs or otherwise engages that candidate.
- 1.4. These Terms must be read in conjunction with an addendum letter (if provided by us) and/or our written confirmation that outlines the details of our engagement, type of assignment you have requested and other relevant information pertaining to that particular engagement ("Engagement Letter").
- 1.5. We provide recruitment services relating to the employment of staff (Permanent Recruitment), fixed term contractors (Fixed Term Recruitment) and temporary contracting recruitment (Contracting Recruitment).

### 2. Permanent Recruitment

#### 2.1. Notification

You agree to notify us immediately in writing if a candidate introduced by us accepts your offer of permanent employment.

#### 2.2. Your Employee

Any candidate employed by you in accordance with these Terms is your employee and you are responsible under any statute, regulation, by-law, ordinance, or other determination of any government agency with the force of law in Australia for:

- a) All of the entitlements of the candidate, including but not limited to payment of salary, annual leave, personal/carer's leave, and long service leave (Employee Entitlements);
- b) All of the obligations of an employer, including but not limited to obligations contained under the Fair Work Act 2009 (Cth) or relevant state Industrial legislation (Employer Obligations), in relation to that candidate.

#### 2.3. Fees and Payment

- a) You must pay us fees relating to Permanent Recruitment (Perm Fee) in accordance with these Terms, unless otherwise specified in a relevant Engagement Letter.
- b) The Perm Fee payable is calculated based on 15% of the candidate's annual commencing salary package. Annual commencing salary will be taken to include cash salary, superannuation, allowances, guaranteed bonuses and commissions, and non-cash benefits, which form an integral part of the remuneration package. The provision of a motor vehicle will be valued at the cashed-out equivalent of the vehicle.
- c) You acknowledge that you must pay us the 15% Perm Fee when an offer of employment is made to and accepted by a candidate. Our invoice for the Perm Fee will be issued to you after the date the candidate is to commence their employment with you and is payable within 14 days of the date of issue.
- d) Part-time Permanent Recruitment placements will not be pro-rated and will be charged at the same rate as full-time Permanent Recruitment placements.

### 3. Temporary Contracting Recruitment

#### 3.1. Our Respective Obligations

- a) Subject to Clauses 3.1(b), 3.1(c) and 3.2, any candidate supplied by us to you under Contracting Recruitment is our employee and we are responsible for Employee Entitlements as set out in Clause 2.2 in relation to that candidate.
- b) You must ensure that all workplace health and safety legislation is complied with in relation to the candidate while on assignment at your premises, or at any other premises as you may direct. This includes induction and training required for the candidate to comply with your OH&S policies and procedures.
- c) You must ensure that all state and federal equal opportunity legislation is complied with in relation to the candidate, including in relation to discrimination and harassment, and ensure compliance with all general protections in Part 3-1 of the Fair Work Act 2009.

#### 3.2. Supervision

You are responsible for the direct supervision and management of the candidate in the performance of the assignment, and the achievement of outcomes required of the assignment.

#### 3.3. Fees

- a) Our Contracting Recruitment fees are invoiced for the time period actually worked by our candidate and will be at the agreed margin.
- b) Our fees include an allowance for applicable statutory charges, including superannuation, payroll tax and workers compensation which will be charged in addition to the set margin.
- c) We may vary our fee to allow for changes in conditions of any federal or state Awards, Australia workplace agreements, collective agreements, and individual transitional employment agreements (Industrial Agreements), and statutory or other charges we may be lawfully required to make. These include, but are not limited to, penalty rates that may apply under an Award or Industrial Agreement for work performed outside normal business hours as specified in the Award or Industrial Agreement.



- d) Where a candidate has been placed by us to you on a contractual basis and you wish to engage that candidate on a permanent basis, the permanent placement fee as set out in clause 2.3 will apply.

#### 3.4. Payment Terms

Our fees are invoiced when we have made payment to our candidate for the period worked and are payable by you within 7 days of the date of our invoice.

#### 3.5. Cancellation Policy

- a) You may cancel a Contracting Recruitment assignment by giving us notice in writing of the duration specified in a relevant Engagement Letter (Notice Period).
- b) We may cancel a Contracting Recruitment assignment without further notice if you are in breach of these Terms and fail to remedy the breach within 14 days of us notifying you in writing.
- c) Where the Contracting Recruitment assignment is cancelled for any reason, you will be liable to pay us the fee in respect of all hours worked by the candidate up to and including the time of cancellation. This will include all Notice Period(s) that the candidate is subject to, or which is required to be given, including any "gardening leave".

#### 3.6. Assignment Variation

You shall not at any time during an assignment require the candidate to undertake work that falls materially outside the original job brief and specification unless we have given our consent in writing.

### 4. Fixed Term Recruitment

#### 4.1. Engagement

Fixed Term Recruitment (Fixed Term) requests for minimum periods of two (2) weeks or more. Fixed Term contracts of 12+ months will be calculated at permanent rates.

#### 4.2. Your Employee

Any candidate employed by you under Fixed Term is your employee and you are responsible for the Employee Entitlements and Employer Obligations as set out in clause 2.2 in relation to that candidate.

#### 4.3. Fees and Payment

- a) You must pay us a Fixed Term fee which will be calculated at **15%** of the candidate's annual commencing salary (or annualised equivalent).
- b) Our Fixed Term Fee must be paid within fourteen (14) days of the date our invoice.
- c) There is no guarantee period for Fixed Term Recruitment.

### 5. Replacement Guarantee

- a) Our Replacement Guarantee period for Permanent Recruitment is 12 weeks from the candidate's start date.
- b) The Replacement Guarantee means that we will use our reasonable commercial endeavours to find a replacement candidate for the position and it will only apply if:
  - i. You have paid our fees in accordance with these Terms; and
  - ii. Your request to replace the candidate is given to us within one (1) week of the candidate's termination; and
  - iii. Your request to replace the candidate is given to us exclusively and in the case of Permanent Recruitment for not less than one (1) month following your request; and
  - iv. The original job specification is unchanged; and
  - v. In the case of Permanent Recruitment, either you or the candidate terminates their employment; or
  - vi. In the case of Fixed Term assignment is for 52 weeks or more.
- c) The Replacement Guarantee will not apply:
  - i. If termination is the result of a change in the job specification, your structure, operations, or workplace conditions; or
  - ii. If you engaged the candidate through us in a temporary capacity in accordance with our Temporary Contracting Recruitment prior to accepting a position under our Permanent or Fixed Term Recruitment; or
  - iii. To replacement candidates placed in employment with you in accordance with this Replacement Guarantee.
- d) If the remuneration package of the replacement candidate differs from the original candidate, the amount invoiced will be adjusted accordingly.
- e) You may not transfer the Replacement Guarantee to any other placement or service provided by us.
- f) The Replacement Guarantee will not apply to Temporary Contracting Recruitment.
- g) The Replacement Guarantee will not apply to Fixed Term Recruitment assignments that is for less than 52 weeks.

### 6. General Provisions

#### 6.1. No Warranties and Indemnities

- a) Although we will conduct interviews and submit details of candidates, we believe are appropriate to the job specification you provide, we make no warranty as to the suitability of any candidate to a particular position. You are responsible for ensuring the candidate is suitable to the position to which they are appointed.
- b) Notwithstanding any other provision of these Terms, we are not liable for any loss suffered by you arising from the introduction of any candidate, any delays in the recruitment process, any errors, omissions or inaccuracies in the information provided to us by third parties, including (but not limited to) information as to a candidate's qualifications and experience and information contained in a candidate's reference, the failure of a candidate to accept an offer of employment, the failure of a candidate to perform their obligations under your employment or control, or any actions or omissions of a candidate. We shall have no liability (whether for breach of contract, under indemnity, negligence, common law, tort, equity, under statute or in restitution, or on any other legal or equitable basis) to you for loss of use, profit, revenue, business, data, contract, or anticipated benefit or saving, or for any delay, financing costs or increase in operating costs or for any special, indirect, or consequential loss. Otherwise, our maximum aggregate liability (whether for breach of contract, under indemnity, negligence, common law, tort, equity, under statute or in restitution, or on any other legal or equitable basis) to you is limited to the fees paid to us by you.



**6.2. Candidate Ownership**

- a) If you choose to interview a candidate presented by us to you or on-refer such candidate to a third-party then you acknowledge that the candidate has been introduced by us subject to these Terms, and that any previous interactions, communications or employment relationships have no bearing on our introduction or the fees payable according to these Terms.
- b) If you interview a candidate and then within the following twelve (12) months:
  - i. Employ that candidate in permanent work, then the terms relating to Permanent Recruitment as indicated at Clause 2 will apply. These include (but are not limited to) the fees payable for Permanent Recruitment services,
  - ii. Engage that candidate on a contract, then the terms relating to Fixed Term Recruitment or Contracting Recruitment as indicated at clauses 3 and 4 (as the case may be) will apply. These include (but are not limited to) the fees payable for Fixed Term Recruitment or Temporary Contracting Recruitment in accordance with causes 3 or 4 as the case may be.
- c) A fee (at our standard rates current at the time) will also be payable by you if you refer a candidate introduced by us to another party who subsequently employs or otherwise engages that candidate.
- d) Our entitlement to a fee will continue for a period of twelve (12) months from the date we introduced the candidate to you, or the date the candidate completed an assignment with you, whichever is the later.
- e) **Confidentiality & Privacy** Introductions made by us are confidential, and you may not disclose to any other party any information relating to the introduction, the candidate, or their subsequent employment without our express written consent.
- f) You agree to comply with the provisions of the Privacy Act (Cth) 1988 regarding the use of personal information and will not use personal information except for the purpose of considering a candidate for an assignment.

**6.3. Goods & Services Tax**

Unless otherwise noted, all fees (including advertising and expenses) quoted by us and payable under these Terms are exclusive of GST, which we will add to our invoice at the prevailing rate.

**6.4. Default Interest**

If you fail to pay any amount payable under these Terms on the due date for payment, you must pay interest on the amount unpaid at the interest rate of 12% per annum. Interest is payable in respect of the period from the due date for payment until the actual date of payment of that amount.

**6.5. Variation**

This Agreement may only be amended or supplemented in writing signed by the Parties.

**6.6. Severability**

Any provision in these Terms is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.

**6.7. Governing Law**

These Terms are governed by the laws of the State of New South Wales. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

**7. Customer Acceptance**

<b>Company Name</b>	
<b>Representative Name</b>	
<b>Signature</b>	
<b>Position</b>	
<b>Date Signed</b>	