

# terms and conditions

## talent transformation australia

### Client Details

**Client name:** .....

**Billing name:** .....

**Address:** .....

**Email address:** .....

**ABN/ACN:** .....

**Contact name:** .....

**Phone number:** .....

**Cost register (office use):** .....

**Signed:** .....

*As an authorised representative of the Client, I accept these Terms and Conditions for and on behalf of the Client.*

**Name:** .....

**Position:** .....

**Date:** .....

### Recitals

- a) Randstad Talent Transformation, a division of Randstad, conducts business in the fields of assessment and consulting around selection, development and workplace mental health support, and coaching services.
  - b) This agreement sets out the terms and conditions agreed between the parties for the provision of Services by Randstad to the Client from time to time.
  - c) This agreement will apply to and in respect of the project outlined in a Proposal, and any other projects for which the Client requests the services of Randstad.
- b) is brought into existence independently of this agreement or the project to which the Services relate.

### 1. Definitions

For the purpose of this agreement, the following definitions will apply:

- **"Background IP"** means the Intellectual Property Rights that a party makes available for the purpose of this agreement, whether upon commencement of this agreement or during the term of the agreement, and
  - a) is in existence prior to the commencement date of the Services; or
- **"GST"** has the same meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- **"Intellectual Property Rights"** means all present and future rights conferred under statute, common law and equity in relation to copyright, inventions (including patents), registered and unregistered trade marks, trade names, logos, registered and unregistered designs and trade secrets or any other proprietary rights arising from intellectual activity.
- **"Materials"** means all material developed or created for the Client for the purpose of providing the Services under this agreement.
- **Privacy Act** means Privacy Act 1988 (Cth), and any amendments and regulations made pursuant to the Privacy Act 1988 (Cth).

- **Proposal** means any proposal issued by Randstad to the Client outlining Services.
- **Service/s** means the services described in the Proposal, provided by Randstad to the Client.

## 2. Acceptance of Agreement

The commencement of the Services under a Proposal will constitute acceptance by the Client of this agreement (if not previously accepted).

## 3. Commencement

This agreement will continue in full force and effect for the duration of the Services, and may be amended by agreement between the parties.

## 4. Randstad Obligations

- 4.1** Subject to the Client complying with its obligations and responsibilities under this agreement, Randstad shall provide the Services with all reasonable skill and care.
- 4.2** The parties acknowledge and agree that any variation to the Service description must be agreed in writing between the parties. In the event that the Client requests any changes to the Service description, Randstad reserves the right to review the fee to be charged to the Client.
- 4.3** The Services shall be provided through Randstad personnel (which may include independent contractors engaged by Randstad). Where key personnel is nominated in a Proposal and are unable to perform the relevant Services, Randstad shall use reasonable endeavours to find suitable replacement personnel to the satisfaction of the Client.

## 5. Client's Obligations

- 5.1** Where the Services are to be provided on the Client's site the Client must ensure that they provide:
  - a) a safe workplace;
  - b) a safe work system;
  - c) an induction to site and equipment, including amenities and evacuation procedures; and
  - d) elimination of hazards and controlling risks to health and safety.
- 5.2** The Client agrees to indemnify and hold Randstad harmless from any loss or damage incurred by Randstad due to any breach of this clause 5.

## 6. Fees

- 6.1** Professional fees payable under this agreement (including under any Proposal) must be paid by the Client in full upon commencement of the Services unless otherwise specified in the Proposal.

- 6.2** Any invoice remitted by Randstad must be paid by the Client within fourteen (14) days from the date of the tax invoice.

- 6.3** Any cancellation of the Services:

- a) within 24 hours (1 business day) of the proposed commencement will be charged in full to the Client; and
- b) within 48 hours (2 business days) of the proposed commencement will be charged 50% of the fees payable.

- 6.4** Incidentals such as travel will be charged to the Client unless otherwise agreed upon in the Proposal. Randstad shall not incur any incidental costs without the prior consent of the Client.

## 7. Termination

- 7.1** Either party may terminate the agreement by providing the other party thirty (30) days written notice.
- 7.2** In the event of early termination of this agreement (including a Proposal):
  - (a) the Client agrees to reimburse Randstad for all reasonable out of pocket expenses incurred by Randstad prior to termination; or
  - (b) where Randstad has invoiced the Client for Services not yet rendered (except in relation to cancellation of the Services pursuant to clause 6.3), Randstad shall issue a credit note to the Client. Any credit note issued shall be current for 12 months from the date of issue.

## 8. Intellectual Property Rights

- 8.1** Randstad warrants that:

- (a) it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights necessary to provide the Services and ensure the Client has the full benefit of the Services; and
- (b) the provision and the Client's use of the Services will not infringe any third party's Intellectual Property Rights.

- 8.2** All rights in Background IP used in connection with the provision of the Services remain with the contributing party.

- 8.3** The Client acknowledges that it will not obtain any Intellectual Property Rights from Randstad under this agreement (including under any Proposal). The Client acknowledges that in the course of performing its obligations under this agreement, Randstad may create Materials. Subject to the Client's rights in its Background IP, Randstad shall own all rights, title and interest in such Materials, including all Intellectual Property Rights.

**8.4** Randstad grants to the Client a non-exclusive, royalty-free, limited licence to use the Materials for the duration of the Services. For the avoidance of doubt, the Client cannot utilise any of Randstad's Intellectual Property Rights, including the Materials, for any commercial purpose without the written permission of Randstad.

**8.5** Any licence granted to the Client under this agreement shall terminate upon termination of the Proposal, unless otherwise agreed between the parties.

## 9. Privacy

Each party must comply with, and ensure that each of its employees, agents and contractors complies with, the Privacy Act in relation to personal information including but not limited to the use, storage and protection of personal information, whether or not it is an organisation bound by the Privacy Act.

## 10. Insurance

Randstad will maintain adequate insurance as required under any applicable law, at such coverage limits in accordance with good professional practice and against insurable risks which may be incurred from the Services provided.

## 11. Restraint

**11.1** In consideration of entering into this agreement each party undertakes to the other party that for the duration of this agreement and for a period of twelve (12) months (or such lesser period as deemed appropriate by a Court of competent jurisdiction) after the date that this agreement is ended each party shall not without the prior written consent of the other party, either directly or indirectly:

- a) approach any employee or agent of the other party for the purpose of enticing that person away from the other party; or
- b) interfere or seek to interfere with the relationship between the other party and the customers, suppliers and employees of the other party.

**11.2** Nothing in this clause shall preclude Randstad from dealing with any Client employees or agents who make a direct approach to Randstad, including where one of Client's employees or agents responds to an advertisement which Randstad has made to the public at large.

**11.3** The parties acknowledge and agree that the prohibitions and restrictions contained in this agreement are reasonable and necessary to protect the goodwill of each party's business.

## 12. Indemnity

**12.1** Randstad's liability under this agreement whether in contract, tort (including but not limited to negligence) or otherwise shall be limited to 100% of the fees which

are paid or payable by the Client to Randstad in the 12 calendar months preceding the event which gave rise to Randstad's liability and in no event shall exceed an aggregate total sum of \$100,000 per year.

**12.2** Neither party will be liable to the other for any indirect or consequential losses, loss of profit, revenue, production, reputation or any special, punitive or exemplary damages.

## 13. Dispute Resolution

**13.1** If a dispute arises between Randstad and the Client concerning any matter arising under this agreement either party may give notice of that dispute to the other party.

**13.2** Upon receiving such a notice, senior representatives of both parties undertake to promptly meet and endeavour to resolve the dispute in good faith.

**13.3** If the dispute cannot be resolved within thirty (30) days of the notice being received (or such additional period as the parties agree in writing) then the parties will refer the dispute to mediation, and have the mediation conducted in accordance with the ACDC Mediation Guidelines.

## 14. GST and Local Taxes

Unless otherwise expressly stated, any and all fees payable under this agreement are exclusive of GST or local taxes (as applicable). The supplier (Randstad) will provide the recipient (the Client) with a tax invoice in respect of any supply made by the supplier to the recipient under this agreement.

## 15. Assignment

Neither party may assign, transfer or sub-contract in whole or in part any of its rights or obligations under these Terms of Business without the prior written consent of the other party. Except, Randstad may freely assign any receivables due to it.

## 16. Variation

This agreement may only be varied in writing by agreement between the parties.

## 17. Notice

Any notice under this agreement will be effective if made in writing and delivered by email, facsimile, hand or post to the other party. A notice under this agreement is deemed to be received by the addressee:

- a) in the case of an email or facsimile, on the business day on which it is sent or, if it is sent on a non business day, the next business day;
- b) in the case of hand delivery, when delivered; and
- c) in the case of postal delivery, on the third business day after posting.

## **18. Inconsistency**

If there is any inconsistency between the provisions of this agreement and the provisions of a Proposal under this agreement, the provisions of this agreement will prevail to the extent of the inconsistency.

## **19. Severance**

If any provision of this agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary to that this agreement will otherwise remain in full force.

## **20. Governing law**

This agreement is governed by, and will be interpreted in accordance with, the laws of the State in which the Services are provided, and the parties submit exclusively to the jurisdiction of the courts of that State and the Commonwealth of Australia.

## **21. Economic Sanctions**

Clients warrants that the provision of services and payment hereunder shall not result in breach of any trade, economic or financial sanctions laws or regulations.