

# Terms and Conditions of Business...

Delivering the Kelly experience

## KELLY

Kelly Services (NZ) Limited ("Kelly") agrees to provide temporary employees ("Temporary(ies)") and/or Permanent Recruitment Services to its clients ("the Client") upon the following terms and conditions ("the Agreement"). Acceptance of the services of the Temporaries and/or the engagement of the Permanent Recruitment or other services of Kelly shall be deemed to be unconditional acceptance of these terms and no amendment shall be effective unless in writing and signed by an authorised officer of Kelly. Terms and conditions of business contained in any contracts entered into between Kelly and its Clients shall supersede any conflicting terms and conditions contained herein.

## Permanent Recruitment Services

### 1. Summary of Relationship.

The Client will place an assignment with Kelly describing the type of work and specific duties to be performed, skills required, and any other requirements to be fulfilled by the candidate. Kelly shall:

- A. recruit qualified candidates using its selection processes,
- B. screen candidates in accordance with agreed requirements,
- C. assess each candidate and verify his/her interest in the opportunity, and
- D. shortlist suitable candidates and effect an introduction of the candidate to the Client.

Upon successful selection or commencement of work by the candidate, irrespective of whether any employment agreement has been signed by the candidate, the Client shall pay the placement fee as agreed upon at the time of order. The Client shall immediately advise Kelly in the event that the Client or a company associated with the Client engages a candidate or agrees to make use of or use the services of a candidate introduced by Kelly in the position offered or in any other position. The agreement applies to all referrals requested by the Client, until the agreement is replaced or amended. The placement fee is calculated as a percentage of the employee's total annual remuneration package and includes any bonus, commission or allowances paid to the employee. Where applicable, an anticipated bonus figure will be agreed with the Client prior to the commencement of services. Unless otherwise specified, where a company vehicle is part of the package it will be valued at the nominal amount of \$12,500. The Client agrees to pay the cost of all forms of advertising e.g. internet, newspapers etc for the recruitment of candidates regardless of the successful or otherwise outcome of the assignment. The Client agrees to pay all disbursements arising in the course of the assignment. Additional consulting services such as Psychological Appraisal, Career Counselling, Internal Appointments and Outplacement Services will be priced on application.



## 2. Replacement Guarantee.

The replacement guarantee for all placements is three (3) months from commencement of employment. In the event a candidate's employment is terminated, other than for redundancy, relocation, company closure or change of management, we will undertake to recruit a suitable replacement candidate on the following sliding scale based on the length of time the candidate was actually employed:

- termination within the first month from commencement of employment candidate replaced free of charge
- termination during the second month after commencement of employment 75% discount off replacement fee
- termination during the third month after commencement of employment 50% discount off replacement fee

In the event of replacement, the Client is obliged to meet the agreed cost of re-advertising (in addition to the balance of any replacement fee applicable under the sliding scale). A credit will only be issued where Kelly is unable to find a suitable replacement candidate within a reasonable time. A Replacement Guarantee will not apply to the replaced candidate. To validate this guarantee, payment of our placement fee must be received within fourteen (14) days of invoice date.

## 3. Billing and Payment Terms.

A retainer fee is payable and will be agreed at the time of order acceptance. The balance of the agreed fee is payable upon the date the successful candidate commences employment, irrespective of whether an employment agreement has been executed. The terms of payment are strictly net fourteen (14) days. The client acknowledges that if payment of the placement fee is not received within fourteen (14) days of the invoice date, the guarantee referred to is null and void.

## 4. Liability.

Whilst every effort is made to ensure that the suitability of candidates referred are of a high standard, Kelly does not accept responsibility for any loss, expense, damage or delay however occasioned (direct, indirect or consequential) arriving out of, or in connection with, the employment of a candidate by the Client. The Client agrees to hold Kelly harmless for any losses, costs, expenses or damage incurred.

## 5. Withdrawn or Cancelled Orders.

Kelly reserves the right to charge up to two thirds of the standard consulting fee for a permanent recruitment assignment that is withdrawn or cancelled by the Client after the recruitment process has been commenced.

## 6. Ownership of Candidate.

A candidate presented to the Client either verbally or by written resume is considered to remain a candidate of Kelly for a period of twelve (12) months from presentation. Should such a candidate be employed in any capacity by the Client, or any associated or affiliated organisation, within the twelve month period, a full placement fee will be payable.

# Temporary Staff

## 1. Kelly's Guarantee.

**Kelly:** guarantees that the Temporary(ies) it assigns to the Client will satisfactorily perform the services ordered by the Client. If such services are not performed satisfactorily by a Temporary(ies) during the first two days of their respective assignment, Kelly will, upon notice from the Client with respect to that period, cancel all charges for such two days of an assignment and furnish a potential replacement as soon as reasonably possible, depending on the skills required and the type of assignment involved. This will be the Client's sole and exclusive remedy with respect to unsatisfactory performance by a Temporary.

## 2. Assignment of Kelly's Temporaries.

**The Client will:** place orders with Kelly describing the type of work requested, specific duties to be performed, skills required, and any other requirements. Kelly will assign Temporaries to perform services that the Client requests under the Client's operational supervision and at the agreed upon rates. The minimum length of assignment is seven (7) hours per day. Cancellation of an assignment will include a minimum of three (3) hours unless cancelled in time to reasonably contact the Temporary before the Temporary has left to attend the assignment. The Client agrees that the services are supplied to the Client for business purposes and that provisions of the Consumer Guarantees Act 1993 do not apply in respect of the supply of such services.

## 3. Employment Relationship with Kelly's Temporaries.

**The parties:** acknowledge their respective responsibilities and duties to meet the requirements of the Health and Safety in Employment Act 1992, Regulations and Approved Codes of Practice. The Client acknowledges it will take all reasonable and practical steps to eliminate hazards and control risks to health and safety, including making available to Kelly, a copy of the Client's Health and Safety policy including evacuation procedures. As the provider of staffing services, Kelly will be the employer of Temporaries, and will be responsible for the staffing services listed below. As the recipient of such staffing services, the Client will be responsible for controlling the environment in which Temporaries perform their work, the details of their work, their work product, and for the business-related responsibilities listed below. The Client acknowledges that it is the responsibility of Kelly to attend to any disciplinary or performance management concerns affecting a Temporary and the Client shall assume all liability in the event the Client should take actions that are deemed to be Kelly responsibilities as defined in this Section 3. Should the matter proceed further the Client agrees to do all things possible to assist Kelly in any action and/or claim taken by any Temporary employee as a result of the actions of the Client.

#### 4. Kelly's Responsibilities.

**Kelly will:** recruit, select, hire Temporaries; assign Temporaries according to the Client's requirements; pay Temporaries their wages and provide the benefits that Kelly offers to them as its employees (e.g. annual, sick and bereavement leave, and statutory holidays). Where applicable contract conditions apply. This may mean a charge for Public Holidays or overtime worked; maintain Temporaries' personnel and payroll records related to their employment by Kelly; comply with laws, rules or regulations applicable to providers of staffing services including compliance with Kelly's current privacy policy and applicable local data protection and privacy requirements currently detailed in the Privacy Act 1993; require Temporaries to agree in writing to protect the confidentiality of the Client's proprietary information; require Temporaries to execute agreements that the Client requests with regard to intellectual property developed by them in performance of their work for the Client; require Temporaries to acknowledge in writing that they have no right to participate in the Client's employee benefit plans; require Temporaries to comply with all rules and policies of the Client (e.g., those relating to premises access and security); and make legally required employment law disclosures to Temporaries;

#### 5. Client's Responsibilities.

**The Client will:** provide Temporaries with a hazard-free work environment, monitor Temporaries health and exposure to significant hazards, ensuring that the Temporaries receive appropriate supervision, instruction and training in the specific functions required by the Client so that work can be carried out correctly and safely and keep Kelly fully informed at all times of any matter that may impact on the health and safety of Temporaries; notify Kelly and subsequently keep Kelly informed of any matters that may involve the Temporary(ies), including but not limited to, issues involving health and safety and union and collective bargaining matters, and, where applicable, allow Kelly to manage and resolve such matters as it directly relates to the Temporary(ies) employment with Kelly; use Temporaries only in assignments that match the job descriptions for which Kelly assigns them; provide adequate internal controls, supervision, and instructions for Temporaries, and at the Client's sole risk be responsible for their conduct when they are required to handle cash, confidential or credit card information, trade secrets, valuables, or similar property or when they use any vehicle or powered mobile equipment by Temporaries in connection with an assignment; be responsible for the acts, errors and omissions of Temporaries:

- A. performing professional, scientific, engineering, technical or similar services,
- B. working at unattended premises,
- C. working in situations lacking in appropriate internal controls and safeguards,
- D. using any vehicle or powered equipment in connection with their Assignment or being exposed to hazardous substances on Assignment,
- E. on payroll service,
- F. operating, and referred by Kelly, as independent contractors; in the case of Temporaries supplied on a "Payroll Only" basis, the Client agrees at all times from the commencement of any assignment to indemnify and keep indemnified Kelly against all actions, proceedings, claims, demands, fines, expenses (including solicitor and own Client costs) and other liabilities of any nature whatsoever which are incurred or may be made or taken against Kelly under the Employment Relations Act 2000, Human Rights Act 1993, Accident Insurance Act 1998, Health and Safety in Employment Act 1992, Privacy Act 1993 and any Acts in substitution thereof arising directly or indirectly in connection with or on account of any matter or thing done or omitted by the Client during the period of the assignment; provide sufficient advance notice of termination of the Agreement or any Assignment so that Kelly may comply with applicable employment law regulations or, instead, reimburse Kelly for compensation paid to Temporary(ies) under law as a result of such termination; be responsible for and hold Kelly harmless from losses, costs, expenses, or damage incurred from the actions of a Temporary under the supervision and control of the Client; effect and maintain reasonable insurance cover in respect of all claims which the Temporary may have against the Client arising out of the Client's occupation of premises, and for any act or omission of the Client in relation to any machinery, equipment or vehicle(s) used by the

Temporary, and to indemnify Kelly against all such claims; be responsible for the conduct of its own officers, employees, and agents; and comply with duties imposed on it by law, rule, collective bargaining agreement or regulation including but not limited to any applicable data privacy and protection laws.

#### 6. Invoices.

**Kelly will:** invoice the Client on a weekly basis for hours worked by Temporaries at agreed-upon hourly bill rates. The rates at which Kelly will invoice the Client, and reimbursable expenses, if any, will be agreed at the time of an order, which Kelly will record electronically in its systems.

#### 7. Adjustments.

**The Client:** agrees that Kelly will adjust pricing annually and, additionally, to reflect market increases in wages and/or related tax, benefit and other costs as the result of any determination, order or action by or under any applicable governmental authority, collective bargaining agreement or insurance or benefit program. Kelly will also adjust pricing for changes in sales, use, or gross receipts taxes (GST).

#### 8. Overtime.

**Kelly will:** charge the Client overtime rates only if Kelly determines overtime pay is legally required and the Client has approved in writing or knowingly allowed the overtime prior to such overtime being worked. Unless listed in a Pricing Schedule, overtime rates will be calculated by applying to Kelly's bill rate the same overtime multiple as Kelly is required to apply to the Temporaries pay rate.

#### 9. Record Of Time Worked.

**The Client:** agrees to review and approve, by signature or electronic means, a record of time worked by Kelly's Temporaries. Hours are charged to the nearest quarter hour. The Client will also designate one or more representatives of the Client to approve or reject the record on its behalf. If a Client representative is unavailable, Kelly's representative responsible for the Client assignment, or other Kelly representative authorised by the Client, may approve the record on the Client's behalf. In order to meet Kelly Services payroll and contractual obligations, all pending records that have been submitted but have not approved or rejected by 5 pm Monday's shall be automatically approved. Every attempt will be made by Kelly to attain Record of Time Worked authorisation within this timeframe.

#### 10. Payment Terms.

Payment for services is due within 7 days of Client's receipt of Kelly's invoice. This is subject to the Postal rules applicable under New Zealand law. Kelly reserves the right to withdraw the Temporaries at any time for non-payment.

#### 11. Conversion and Transition of Kelly's Temporaries.

**The Client:** acknowledges that Kelly incurs substantial expenses for recruiting, testing, training and retaining its employees, and the Client agrees to obtain the services of each Temporary only through an order with Kelly. In the event that a Temporary, supplied by Kelly, is hired, either directly or indirectly, on a permanent or temporary basis by the Client or any associated or affiliated organisation, or any third party (where the hiring is as a consequence of the supply of the temporary by Kelly to the Client), whilst on assignment or within six months of the date of completion of an assignment, the Client agrees to pay Kelly a placement fee to be determined by Kelly. No replacement guarantee applies. Following completion of an existing Temporary assignment, any further contact with the Temporary must be made through Kelly.



## General

### 1. Taxes.

All amounts payable under the Agreement are exclusive of GST, which will be added to the relevant invoice. The Client will pay to Kelly all GST properly chargeable and charged for services.

### 2. Issue Resolution and Indemnification.

Kelly and the Client expect to resolve any other issues that arise with respect to performance of the Agreement through business discussion and conciliation. In the event a Temporary/Contractor suffers an injury or death on assignment as a result of the Client's failure to comply with the provisions of the Agreement, the Client shall indemnify Kelly for any payment made, or expense incurred, as a result of that injury or death.

### 3. Non Payment.

In the event Kelly is required to undertake action for recovery of outstanding debts from the Client, if the Client agrees that its non-payment of the relevant invoice was not justified or if a court orders the Client to make payment of such invoice to Kelly, then the actual costs and disbursements incurred by Kelly in recovery of the invoice amount by Kelly shall be recoverable by Kelly from the Client. Kelly reserves the right to charge interest on overdue amounts at the rate of 11% per annum calculated on a daily basis on the date payment is due until payment is received by Kelly.

### 4. Governing Law.

The Agreement will be governed by the internal laws of New Zealand, without regard to its conflicts of laws rules.



### 5. Force Majeure.

Kelly shall not be liable to the Client for any failure to carry out its obligations hereunder or any loss or damage suffered by the Client where such failure or such loss or damage is caused by the negligence of the Client, or the mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, Act of God, war (whether declared or not), any Act, regulation, or restriction imposed by Government, riot or civil disobedience.

### 6. Entire Agreement.

The Agreement (including any attachments) contains all of the terms between the Client and Kelly on the subject of temporary and permanent staffing services for the jobs and locations specified and shall replace all prior agreements and representations on the subject. The Agreement may be modified or supplemented only by a signed and dated written amendment referring to it. Forms that may be used by the parties in their staffing relationship such as purchase orders, time cards, and invoice recitals will not supercede, supplement, modify, or control the Agreement.

I agree to the Terms and Conditions of Business as detailed above...

Client \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date Signed \_\_\_\_\_



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**KELLY**<sup>®</sup>

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