

# Terms of Business

The terms and conditions on which Protech provides recruitment and on-hire services to its clients are set out in these Terms of Business (**TOB**) below. This document is to be read in conjunction with the Credit Application Terms.

## 1. DEFINITIONS

**Candidate** means a person introduced to the Client by Protech in the course of providing the Services for consideration by the client for direct employment.

**Client** means the Client named in the Proposal and the Applicant named in the Credit Application Form.

**Credit Application Terms** means the terms contained within the Credit Application Form, the Terms and Conditions attached to the Credit Application, and the Deed of Guarantee and Indemnity (Annexure A to the Credit Application) executed by the Client and its guarantors for the purpose of maintaining a credit account with Protech.

**Direct Engagement Fee** means the fee contained in the Proposal.

**GARP** means the Candidate's gross annual remuneration package and includes all amounts payable to the Candidate (including, but not limited to salary, superannuation, bonuses, car allowances and other monetary amounts or benefits).

**Proposal** means the proposal document provided by Protech to the Client setting out the job specification schedule and the Services to be provided to the Client.

**Protech** means Protech's contracting entity specified in the Proposal.

**Security of Payment Act** means, if the Services are provided in:

- (a) New South Wales, the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) Northern Territory, the *Construction Contracts (Security of Payment) Act 2004* (NT)
- (c) Queensland, the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) South Australia, *Building and Construction Industry Security of Payment Act 2009* (SA);
- (e) Victoria, the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (f) Western Australia, the *Construction Contracts Act 2004* (WA);
- (g) Australian Capital Territory, the *Construction Industry (Security of Payment) Act 2009* (ACT); and
- (h) Tasmania, the *Building and Construction Industry Security of Payment Act 2009* (TAS).

and any subsequent amendments to each of the abovementioned Acts.

**Services** means the services set out in the relevant Proposal.

**Temporary Worker** means a person employed by Protech that is contracted to perform work on an on-hire/assignment basis to the Client.

## 2. SERVICE SPECIFICATIONS

- 2.1 The following documents form the Contract between Protech and the Client, the:
  - (a) Proposal;
  - (b) TOB; and
  - (c) Credit Application Terms.
- 2.2 In the event of any inconsistency between any of the above documents, the Proposal shall prevail.
- 2.3 The TOB and Proposal are subject to Protech's Credit Application Terms and site safety approval process where applicable.
- 2.4 Capitalised terms used but not defined in these TOB have the meaning given to them in the Proposal and Credit Application Terms.

## 3. PROTECH'S ACTIVITIES

### Temporary Workers

- 3.1 Where the Services include the provision of Temporary Workers, Protech will:
  - (a) undertake advertising, search and profiling activities on behalf of the Client;
  - (b) take all reasonable steps to verify that the Temporary Worker has the requisite qualifications, skills and experience to perform the work required by the Client as specified in the Proposal (including, but not limited to, by conducting interviews and obtaining independent references);
  - (c) directly employ each Temporary Worker and be solely responsible for the payment of wages, superannuation, payroll and PAYG tax and all other benefits and entitlements usually afforded to employees, in respect of each Temporary Worker;
  - (d) ensure payment of Temporary Workers is compliant with industrial requirements;
  - (e) take out and maintain public liability, professional liability and workers' compensation insurance in respect of each Temporary Worker;
  - (f) provide each Temporary Worker with a generic safety induction; and
  - (g) ensure each Temporary Worker enters into a contract with Protech that:
    - (i) protects the confidentiality of the Client's confidential information; and
    - (ii) vests the intellectual property rights in materials created, generated or discovered by the Temporary Worker whilst performing work for the Client, in the Client.

### Permanent placements

- 3.2 Where the Services relate to a permanent placement, Protech will:
  - (a) undertake advertising, searching and screening activities to source suitable Candidates for the position set out in the Proposal; and
  - (b) endeavour to introduce Candidates to the Client who have the qualifications, skills and experience required by the Client.

## 4. CLIENT RESPONSIBILITIES

- 4.1 In exchange for receiving the Services, the Client must:
  - (a) provide Protech with information regarding the work that the Client requires to be performed, the skills, qualifications and experience required by the Client and any other information that Protech reasonably requests in order for it to properly ascertain the suitability of a prospective Temporary Worker or potential Candidate;
  - (b) comply with all of its obligations under privacy legislation in respect of the collection, handling, use and disclosure of personal and sensitive information concerning a Candidate or Temporary Worker;
  - (c) comply with all applicable legislation in respect of its dealings with Candidates and Temporary Workers and not do anything that may cause Protech to breach its obligations to a Candidate or Temporary Worker under any applicable legislation;
  - (d) notify Protech immediately on knowledge of any breaches, investigations or incidents relating to a Protech employee, including but not limited to OH&S Incidents or near misses, Policy breaches including Client policies, EEO legislation breaches or any other incidents where by a reasonable person would notify an employer;
  - (e) take out and maintain appropriate insurance for all works carried out by the Client, including against liability for work carried out by a Temporary Worker;
  - (f) ensure that any directions provided to a Temporary Worker do not result in that worker contravening any applicable legislation;
  - (g) provide adequate supervision and direction to Temporary Workers and only require a Temporary Worker to perform tasks that they are appropriately skilled and properly trained to perform;
  - (h) not make any changes to the conditions under which the Temporary Worker performs their assignment without first obtaining Protech's written agreement (such changes include, but are not limited to, changes to a Temporary Worker's supervisor, duties, hours of work

or location);

- (i) notify Protech as soon as practicable if they are not satisfied with the work, performance or behaviour of a Temporary Worker;
- (j) notify Protech as soon as a Candidate or Temporary Worker is proposed to be engaged by the Client (or an associated entity) in any capacity; and
- (k) comply with the remaining provisions of these TOB.

## 5. FEES

### Permanent placements

- 5.1 Where the Client, an associated entity, or a third party on behalf of the Client engages, either directly or indirectly, any Candidate in any position and at any time within 6 months of the introduction of that candidate by Protech to the Client, the Client will be liable to pay the Engagement Fee set out in the Proposal to Protech.
- 5.2 Protech reserves the right to request that the Client pay the Engagement Fee in advance on terms reasonably required by Protech or by way of progress payments in accordance with the payment terms in clause 6. Regardless of whether the Engagement Fee is paid in advance or in progress payments, Protech will be entitled to retain the monies paid in circumstances where the Client terminates the engagement. If the Engagement Fee is paid by progress payments, the Client remains liable for the balance of the Engagement Fee which remains outstanding at such date of termination.
- 5.3 Protech defines the minimum value attributed to a motor vehicle provided as part of a Candidate's GARP will be \$15,000.
- 5.4 Permanent Placement Fees

Total Annual GARP	Percentage of Total Annual Gross Remuneration payable as Recruitment Fees
Up to \$49,999	12%
\$50,000 to \$79,999	14%
\$80,000 to \$119,999	16%
\$120,000 to \$179,999	18%
\$180,000 and over	20%

### Temporary Workers

#### Hourly rates

- 5.5 Protech will charge hourly rates (excluding GST) in respect of each Temporary Worker supplied to the Client. All engagements are subject to a minimum engagement of 4 hours. Cancellation of any engagement is required to be within a minimum of 2 hours' notice before engagement start time.
- 5.6 The applicable rates (excluding GST) will be set out in the Proposal and will be subject to annual review.
- 5.7 Where rates have been calculated based on rates payable under an industrial instrument and current statutory requirements, Protech reserves the right to:
  - (a) Increase/revise rates (after providing at least 7 days written notice to the Client) in circumstances where:
    - (i) entitlements under the industrial instrument are changed or increased; or
    - (ii) Protech becomes liable (or is required by the Client) to pay an additional allowance or special rate other than those contemplated at the time of setting the hourly rates; and/or
    - (iii) changes in statutory costs, as amended from time to time.
  - (b) require reimbursement from the Client in circumstances where Protech becomes liable for back payment as a result of either:
    - (i) changes to the industrial instrument; or
    - (ii) additional unforeseen allowances or special rates being payable.

#### Timesheets

- 5.8 A Temporary Worker is required to complete a weekly timesheet which must then be signed by the Client supervisor (or other authorised

representative of the Client) and returned to Protech the following week on the day indicated on the approved timesheet. The Client supervisor's signature (or the signature of another authorised representative of the Client) is required on the timesheet as confirmation that the Client accepts the hours as recorded on the timesheet as being correct and that the Client will be liable for payment to Protech of the hourly rates associated with the time recorded on the timesheet.

#### Direct engagement

- 5.9 In the event that the Client, its associated entities, or third party on behalf of the Client, wishes to directly or indirectly engage or employ any Protech Temporary Worker, other than through Protech, during the course of their assignment with the Client and within the Agreed Period as set out in the Proposal, the Client must pay to Protech the Direct Engagement Fee set out in the Proposal.
- 5.10 If a Temporary Worker is terminated for any reason, prior to the completion of the Agreed Period, and subsequently re-engaged directly or indirectly on a Client site within the Agreed Period as set out in the Proposal, the Client will pay the Direct Engagement Fee as set out in the Proposal to Protech.

#### Transition Provision

- 5.11 If the Client elects to transition any Temporary Worker introduced by Protech to any third party or associated entity, the Client must pay Protech the appropriate placement fee in accordance with the Direct Engagement Fee set out in Proposal. The Transition Process will be in accordance with the RCSA guidelines.

#### Fees for additional services

- 5.12 Upon request, Protech may provide the following services to the Client for an additional fee:
  - (a) advertising (excluding web based advertising which is provided free of charge) and targeted recruitment drives;
  - (b) personal assessments/psychological profiling;
  - (c) medical assessments;
  - (d) skills assessments;
  - (e) pre-employment services; and
  - (f) integration strategies.

## 6. PAYMENT TERMS

### Invoicing

- 6.1 Amounts payable under these TOB will be invoiced to the Client and are subject to GST.
- 6.2 Protech will issue its invoices weekly, monthly or as agreed, and the Client must pay the amount due within the time provided for under each invoice.
- 6.3 Where applicable, Protech invoices will be considered payment claims under the relevant Security of Payment Act under the laws of the State in which the Services are provided.

### Interest charges and recovery expenses

- 6.4 Unpaid invoices will attract interest at the Reserve Bank Cash Target Rate at the time plus an additional 6% per annum. Interest will be calculated daily and will be compounded monthly. Interest accrues daily from and including the due date for payment up to, but excluding, the actual date of payment.

### Suspension of Services

- 6.5 Protech, in its absolute discretion and without incurring liability to the Client, may suspend or cease supply of goods and services to the Client.

## 7. REPLACEMENT GUARANTEE – PERMANENT PLACEMENTS ONLY

### Guarantee

- 7.1 Subject to clause 7.2, where the Client employs a Candidate directly or indirectly and the Candidate's employment ends within 3 months of commencement (either as a result of the Candidate's resignation or termination by the Client), Protech will endeavour to find one replacement employee free of additional charge.

### Conditions of guarantee

- 7.2 The replacement guarantee provided under this clause only applies in circumstances where:
  - (a) the Client has:

- (i) paid all fees associated with the provision of the Services in accordance with clause 6; and
  - (ii) notified Protech in writing within 7 days of the termination of the Candidate's employment;
- (b) the termination was not as a result of redundancy, change to position description or adverse working conditions;
  - (c) the Client is not subject to a payment plan or schedule charge; and
  - (d) the requisite terms, conditions, duties, experience and qualifications associated with the role have not changed.

#### Re-engagement

- 7.3 In the event that the Client or its associated entities subsequently re-engages the Candidate within 12 months after the date of termination or resignation under clause 7.1, the Client will be liable to pay the Engagement Fee in respect of any replacement employee sourced under this clause 7 (and this replacement guarantee will not apply in respect of the replacement employee).

## 8. HEALTH AND SAFETY - TEMPORARY WORKERS

### Duties and obligations

- 8.1 Protech and the Client have concurrent duties to take all reasonably practicable steps to ensure the health and safety of a Temporary Worker whilst performing work for the Client.
- 8.2 To enable Protech to meet its work health and safety (WHS) obligations, the Client must:
- (a) co-operate and consult with Protech in respect of WHS matters;
  - (b) provide Protech with copies of its WHS policies and procedures, induction and training records, and any other documentation concerning WHS reasonably requested by Protech;
  - (c) permit Protech to enter the Client's premises for the purpose of conducting WHS training, toolboxes, inspections, investigations, audits or interviewing relevant staff members; and
  - (d) notify Protech in the event of any WHS incident involving a Temporary Worker.
- 8.3 To assist the Client in meeting its WHS obligations, Protech will:
- (a) co-operate and consult with the Client in respect of WHS matters;
  - (b) direct a Temporary Worker to comply with the Client's policies, procedures and directions regarding WHS;
  - (c) notify the Client in the event that a Temporary Worker advises Protech of any WHS incident or risk; and
  - (d) treat all information regarding the clients WHS policies and procedures as commercial in confidence.

### Induction and training

- 8.4 The Client must conduct a site/job specific safety induction with the Temporary Worker prior to commencement of their duties, and complete and return the Protech new starter induction verification. Time spent attending inductions will be charged to the Client at the applicable hourly rate.
- 8.5 Following the initial induction, the Client must provide a Temporary Worker with sufficient training, guidance and supervision to enable them to work in a manner that is free from risk to their own health and safety (and the health and safety of those who may be affected by their actions).

### Supervision and control

- 8.6 The Client acknowledges that Protech is not supervising or managing the work of a Temporary Worker and that the worker is under the direction, control and supervision of the Client for the duration of each assignment.

### PPE

- 8.7 The Client is responsible for providing all personal protective equipment or clothing required to enable a Temporary Worker to perform their work for the Client safely, unless otherwise specified in the Proposal.
- 8.8 All PPE provided to a Protech employee must meet as a minimum the Australian standard and training must be provided for its use.

### Rehabilitation

- 8.9 In the event of injury to a Temporary Worker whilst performing work for the Client, the Client agrees to assist Protech to meet its obligations in respect of rehabilitation of the injured Temporary Worker (including permitting the

Temporary Worker to work reduced hours or on suitable duties where reasonably practicable).

## 9. LIABILITY AND INDEMNITY

### Limitation of liability

- 9.1 The Client acknowledges that Protech is not liable to the client in respect of any damage, loss or injury of any nature or kind as a result of:
- (a) the introduction of a Candidate or Temporary Worker to the Client by Protech;
  - (b) the subsequent employment of a Candidate or Temporary Worker by the Client;
  - (c) the acts or omissions (whether negligent or otherwise) of a Candidate or Temporary Worker; or
  - (d) a Candidate or Temporary Worker not completing their assignment with the Client.

### Indemnity

- 9.2 The Client agrees to indemnify and keep indemnified Protech and its directors, officers, employees and agents from and against all actions, claims, proceedings, demands, liabilities, penalties, loss, damage, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Protech or which Protech may pay, suffer, sustain or incur as a direct or indirect result of:
- (a) Protech providing the Services or engaging in any activity on behalf of the Client;
  - (b) any failure by the Client to comply with its obligations under any applicable legislation (including but not limited to its obligations to Temporary Workers or Candidates);
  - (c) a decision by the Client to cease using a Candidate or Temporary Worker's services (including any consequential termination of the Candidate or Temporary Workers' employment by Protech);
  - (d) any act or omission of a Candidate or Temporary Worker whilst under the Client's care, direction or control;
  - (e) breach of these TOB or Credit Application Terms by the Client; or
  - (f) any act or omission by the Client or its employees or agents.

## 10. CESSATION OF ASSIGNMENT OF A TEMPORARY WORKER

### Cessation by Client

- 10.1 Excluding situations involving serious misconduct, in the event that the Client wishes to cease using the services of a Temporary Worker, it must give the following period of notice to Protech in writing and provide reasons for its decision:
- (a) for Temporary On-Hire Workers – at least 1 days' notice, unless otherwise agreed on the Proposal; or
  - (b) for Temporary Fixed Term Contract Workers – at least 1 weeks' notice.
- 10.2 In the event that a Temporary Worker is found to have engaged in serious misconduct (as defined under the *Fair Work Act 2009* (Cth)), after full investigation, the Client will be permitted to cease using the services of the Temporary Worker immediately upon written notification to Protech.
- 10.3 The Client acknowledges that whilst they can cease using the services of a Temporary Worker, they do not have the power to terminate the Temporary Worker's employment with Protech and that such power lies solely with Protech.

### Cessation by Protech

- 10.4 As soon as practicable after becoming aware that either:
- (a) a Temporary Worker has terminated their employment with Protech; or
  - (b) Protech intends to terminate the employment of a Temporary Worker,

Protech will notify the Client in writing of the date on which the Temporary Worker will cease to be available to the Client and if appropriate provide a suitable alternative.

## 11. TERMINATION OF ENGAGEMENT

- 11.1 Protech's engagement to provide the Services will:

- (a) commence on the date that the Credit Application Terms, TOB and the Proposal are taken as being accepted by the Client; and
  - (b) continue indefinitely unless terminated in accordance with this clause.
- 11.2 Subject to clause 11.3, either Protech or the Client may terminate the engagement to provide the Services:
- (a) at any time provided at least one month's written notice is provided to the non-terminating party; or
  - (b) immediately and without notice as a result of a material breach of the Credit Application Terms or TOB by the other party (provided the other party has been given written notice of the breach and at least 14 days to rectify the breach).
- 11.3 The Client may only terminate the engagement where:
- (a) the engagement of all Temporary Workers has ceased, and
  - (b) the Client has fully satisfied all outstanding fees, expenses and liabilities arising under these TOB and the Credit Application Terms.

## 12. MISCELLANEOUS

### Relationship with Temporary Workers

12.1 Nothing in the Credit Application Terms or TOB is to be construed as creating or implying an employment relationship between the Client and a Temporary Worker or Candidate.

### Entire agreement

12.2 These TOB together with the relevant Proposal and (if applicable) the Credit Application Terms contains the entire agreement between the Client and Protech with respect to its subject matter. It sets out the only conduct relied on by Protech and the Client and supersedes all earlier representations, conduct, contracts, expectations or arrangements by Protech or the Client with respect to its subject matter.

### Severance

12.3 If a provision, or part of a provision, of these TOB or the Credit Application Terms are void or voidable, that provision, or part, is severed and the remainder of the TOB and (if applicable) Credit Application Terms have full force and effect.

### Variation

12.4 Protech may vary or amend these TOB and / or the Credit Application Terms at any time upon giving at least 7 days written notice to the Client. However, any proposed changes to the details set out in the Proposal must be agreed in writing between Protech and the Client.

### Assignment

12.5 The rights and obligations of each party under these TOB and the Credit Application Terms are personal. They cannot be assigned, charged or otherwise dealt with (except as expressly provided under these TOB), and neither Protech nor the Client will attempt to purport to do so, without the proper written consent of the other.

### Waiver

12.6 No failure to exercise or delay in exercising any right, power or remedy under these TOB or Credit Application Terms will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.

### Governing law

12.7 These TOB and the Credit Application Terms will be governed by, constructed by and take effect in accordance with the laws of the State in which the Services are provided and Protech and the Client submit to the non-exclusive jurisdiction of that State.

### Job Active Eligibility

12.8 The Client acknowledges that Protech may provide assignments to registered job seekers who may be eligible for government funding.

## 13. PERSONAL PROPERTY SECURITIES ACT

13.1 In this clause 13, words and phrases that have defined meanings in the *Personal Property Securities Act 2009* (Cth) (PPSA) have the same meaning as in the PPSA unless the context indicates otherwise and a reference to a section shall be a reference to a section in the PPSA.

- 13.2 The Client acknowledges and agrees that procuring Services from Protech on credit may give rise to a security interest in favour of Protech as the secured party. The Client, as grantor, grants a security interest in all its present and after-acquired property (without exceptions) or such other form of security interest as Protech may reasonably register on the PPSR as security for the performance of the Client's obligations in accordance with these TOB, the Proposal and the Credit Application Terms.
- 13.3 The Client agrees to sign any further documents and/or provide such further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) which Protech may reasonably require to enable the registration of a financing statement or financing change statement (as defined in the PPSA) on the Personal Property Securities Register in Australia.
- 13.4 The Client must notify Protech in writing at least 14 days before it does anything which may affect the effectiveness of Protech's security interest.
- 13.5 The parties agree that, pursuant to section 275(6) of the PPSA, neither party will request or be obliged to disclose information of the kind mentioned in section 275(1).
- 13.6 The Client irrevocably agrees:
- (a) to use its best efforts to do anything which Protech asks and considers necessary for the purposes of Protech exercising its rights in connection with its security interest;
  - (b) not to make an amendment demand under the PPSA;
  - (c) as a grantor under the PPSA, it has waived its rights to receive any notice required by any provision of the PPSA (including a notice of a verification statement) to the extent that such a right can be excluded; and
  - (d) to the extent the law permits, section 143 is excluded, and that Protech, as the secured party under the PPSA, need not comply with sections 121(4), 130, 132(3)(d) or 132(4).

## 14. ACCEPTANCE

- 14.1 A Client will be taken to have accepted these TOB by undertaking any of the following actions:
- (a) signing and returning to Protech a copy of the Proposal in the engagement proposal;
  - (b) signing and returning to Protech a copy of the Credit Application Form (including the deed of guarantee and indemnity);
  - (c) approving any media advertisement;
  - (d) accepting the referral of or engaging a Candidate;
  - (e) accepting the services of a Temporary Worker, or
  - (f) signing and submitting a timesheet.