

# TERMS OF BUSINESS: PERMANENT RECRUITMENT

Between

Bluefin Limited (“Bluefin”)

&

You (“the Client”)

Bluefin Limited and you agree the following:

## 1. ABOUT THESE TERMS

- 1.1. These terms apply to any request you make to us to find candidates for you, unless otherwise agreed in writing between us.
- 1.2. By requesting us to find candidates for you, or acceptance of a candidate’s resume from us, you are deemed to have accepted these terms. These terms will continue to apply until we agree new terms with you.
- 1.3. We may vary these terms from time to time, and you are deemed to have accepted the variations from the next request you make to us to find candidates for you.
- 1.4. In these terms, “\$” or “dollars” refers to New Zealand dollars and all amounts payable by you are to be paid in New Zealand currency.

## 2. FINDING A CANDIDATE

- 2.1. You may notify us (verbally or in writing) of your recruitment requirements (the “Order”). You must provide us with all information reasonably required by us to complete your recruitment, including the position to be held by the candidate, the nature and type of work to be carried out by the candidate, any qualifications, special skills, experience or qualities required, and the employee entitlements to be offered to the candidate (including the estimated remuneration package), together with hours of work and details of the workplace.
- 2.2. We will use reasonable commercial endeavours to find candidates for you pursuant to the Order under clause 2.1. We will find one or more candidates for you to interview (the “Shortlist”). For the purpose of finding a candidate we may do any of the following, and will use reasonable endeavours to keep you informed through the process:
  - (a) Advertise for candidates by placing advertisements on our webpages and social media pages, and taking out advertisements on Seek, TradeMe or Taituarā’s LGJobs board (but excluding all other advertising such as television and radio advertising);

- (b) Request, accept, review and consider resumes from candidates;
  - (c) Carry out, telephone screening and preliminary interviews with short-listed candidates (whether by phone, video or in person).
  - (d) Provide you with the shortlisted profiles: Candidate's resume, brief you on candidates and introduce you to candidates (whether by phone, video or in person); and
  - (e) Once you have interviewed the candidate(s) and selected the successful candidate, we will carry out reference checks and any other suitability checks agreed with you at the time.
- 2.3. For the avoidance of any doubt, we will present you with a shortlist of one or more candidates, but you are responsible for interviewing such candidates and selecting the successful candidate.
- 2.4. Upon final selection of a candidate, we will manage the offer process for you, therefore you must promptly notify us once a successful candidate has been identified and send to us your prepared employment contract.

### 3. CANDIDATE INTRODUCTION

- 3.1. While the employed candidate remains in your employment, we shall not approach or induce or attempt to induce the employed candidate to leave his or her employment with you or to enter any employment with us or any other person. This does not preclude us assisting the candidate with any employment during this period if they approach us.
- 3.2. If we introduce or refer a candidate to you, and at any time during the 12 months thereafter you (or any related person or organisation) employ that candidate, you are deemed to have found the candidate through us and will be required to pay the fee set out in clause 5.1 to us.

### 4. OUR GUARANTEE

- 4.1. If the employed candidate resigns or their employment has been lawfully terminated by you within the first 90 days of their employment, we will use reasonable commercial endeavours to find a replacement candidate and will not charge any additional fee to do so.
- 4.2. For the avoidance of doubt, the first ninety (90) days referred to in clause 4.1 is calculated from the start date of employment up until the date of resignation. This does not include the notice period.
- 4.3. This guarantee is given in respect of the original candidate (and not any replacement candidate) and does not apply when a candidate's employment has been terminated for redundancy, relocation, merger, takeover or change of employment conditions.
- 4.4. If we are unable to find a replacement candidate within six months, we will give you a credit note for any fees (excluding disbursements) paid by you in relation to the recruitment of the original candidate. The credit note is valid for a period of 12 months from the date you gave us notice of the resignation or termination under clause 4.1 and is valid for the same services (that is, requesting us to find a

candidate for you to employ in your organisation). For the avoidance of any doubt, we do not offer a refund of the fees paid by you.

## 5. FEE AND PAYMENT

- 5.1. The fee payable by you for our services will be calculated at 16% of the annualized remuneration package offered to the candidate as disclosed in the Order. The package is described as basic salary, superannuation (if any), total on-target commissions and bonuses (if any), allowance and benefits (including private use of a motor vehicle, if any) that represent cash in alternative forms.
  - 5.1.1. Where the employee is paid an hourly rate instead of a salary, our fee will be based on a 40 hour week, even if the candidate will work less than 40 hours.
- 5.2. The fee set out in clause 5.1 covers recruitment as set out in clause 2.2. If you request that we take steps above and beyond what is set out in clause 2.2, we may charge you for any expenses incurred by us in doing so. For example, if you request that we carry out television or radio advertising or that we travel out of town to carry out a preliminary interview of the candidates, we will charge you for any actual and reasonable expenses incurred by us in doing so. We will gain your approval for any such expenditure on your behalf before incurring it.
  - 5.2.1. If you withdraw the Order after we have commenced the recruitment process we will invoice for the process in accordance with clause 5.4 below, up to but not beyond the step which we have concluded. For example, if we have presented you with a shortlist of candidates, we will invoice you for two thirds of the agreed fee.
- 5.3. All fees are quoted exclusive of GST. You will pay GST to us at the same time and in the same manner as the payment of the supply to which the GST relates and at the rate applicable at the time of the invoice.
- 5.4. We invoice you in three steps as follows:
  - (a) Step One: One third of the fee referred to in clause 5.1 on confirmation of the Order referred to in clause 2.1
  - (b) Step Two: One third of the fee as above on presentation of the shortlist; and
  - (c) Step Three: The final third at the time of, and contingent upon, the successful candidate's acceptance of your offer.
- 5.5. You are required to make payment to us as set out in the invoice. Payment in full is due within seven (7) days from the date of invoice.
- 5.6. If you fail to pay any amount when required under the agreement, we reserve the right to suspend delivery of any Order without incurring any liability. You shall be liable for all expenses and costs (including legal and debt collection) in relation to collection of outstanding amounts under this Agreement.
- 5.7. If payment is not received by the due date, you will not be able to rely on our guarantee as set out in clause 4.1 and may require you to pay interest on a compounding basis at a rate of 2.5% per calendar month on any overdue amount.

## 6. CONFIDENTIAL AND PRIVATE INFORMATION

- 6.1. You agree:
- (a) To treat all information which comes to your knowledge or into your possession in connection with these terms and any order as strictly private and confidential;
  - (b) Not to divulge that information to any third party, other than to your consultants, advisers or employees who have a need to know, or as required by law;
  - (c) To return any information to us in relation to a candidate which did not become the employed candidate; and
  - (d) To always comply with the Privacy Act 1993 in relation to any candidate information we may disclose for the purpose of completing the Order.

## 7. WARRANTIES

- 7.1. Other than the guarantee given in Section 4, all express or implied or other representations or warranties in relation to the candidates are expressly excluded to the maximum extent permitted by law.

## 8. LIMITATION OF LIABILITY

- 8.1. Our total liability for a breach of the guarantee given in Section 4, or any other provision of these terms, whether in contract, tort, negligence or in any other way, will not exceed the amount of the fee actually paid by you in relation to the candidate giving rise to the breach.
- 8.2. In no event will we be liable to you, whether in contract, tort, negligence or in any other way, for any:
- (a) loss, damage, cost or expense of any kind whatsoever in connection with any delay or failure to provide any candidate for any Order;
  - (b) loss of profits or savings, loss of revenue, loss of goodwill or opportunity; or
  - (c) loss, damage, cost or expense of any kind whatsoever which is indirect, consequential or of a special or punitive nature even if such loss, damage, cost or expense was reasonably foreseeable.

## 9. CREDIT CHECK (IF ANY)

- 9.1. You authorise us to collect, retain and use information about you for the purposes of carrying out credit checks, deciding whether to continue to make services available to you, debt collecting and marketing.
- 9.2. As part of this, you authorise us to obtain credit reports and other information about you from any third party (including third party credit agencies) notified by us to you for this purpose. You also authorise us to provide information about you (including information relating to any default in your payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law, those third parties may hold that information in their systems and use it now and in the future.
- 9.3. You may ask to see any personal information we hold about you and ask for any details that are wrong to be corrected.

## 10. GENERAL TERMS

- 10.1. **Disputes:** If a dispute arises out of or relates to these terms or any candidate, the parties will endeavour to resolve the dispute by good faith negotiations between the parties. If the parties are unable to resolve the dispute during negotiations, either party may refer the dispute to mediation by notice in writing by a mediator to be agreed between the parties within five working days of that notice or failing agreement by the president of the New Zealand Law Society or their nominee. The parties will share the costs of the mediator equally.
- 10.2. **Amendments:** Any amendments or modifications to these terms must be agreed to by a director of Bluefin and must be in writing.
- 10.3. **Entire Agreement:** These terms, together with any Order, constitute the entire agreement between the parties relating to their subject matter.
- 10.4. **Waiver:** A waiver of these terms will only be effective if given by us in writing and only to the extent expressly stated to be given. Any waiver will not affect our rights under these Terms at any future time.
- 10.5. **Illegality:** If any part of these terms is illegal, unenforceable or invalid, the remaining provisions, or the remainder of the provision concerned, shall continue in effect.
- 10.6. **Notices:** Notices and other communications are deemed to have been served to either party if they are hand delivered, transmitted by facsimile, posted or emailed. They are deemed to have been received unless the sender should have been reasonably aware that the delivery failed.
- 10.7. **Governing Law:** Our relationship with you is governed by New Zealand law and the courts of New Zealand have exclusive jurisdiction.

### EXECUTIONS:

<b>Client</b> .....	<b>Bluefin Limited</b>
Name.....	Name.....
Position.....	Position.....
Signed.....	Signed.....
Date.....	Date.....