

BUSINESS TERMS AND CONDITIONS**1. ACCEPTANCE**

1.1 These Business Terms and Conditions (**Terms**) are between WORKITJOBS PTY LTD (ABN 87 610 340 362), its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and you, the person, organisation or entity that users or purchases any services (**Services**) from us (referred to as “**you**” or “**your**”), and collectively the Parties. These Terms apply to all sales made by us to you.

1.2 These Terms govern the Services including but not limited to access to an online employment directory and listing services available on our website www.WORKITJOBS.com (**Site**). You accept these Terms by:

- (a) ticking the online acceptance box;
- (b) confirming by email that you accept the Terms;
- (c) making part or full payment for the Services via our Site; or
- (d) making part or full payment for the Services, set out in our tax invoice to you (**Invoice**).

1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Services indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you should not use or purchase our Services from us.

1.4 **Please note the other terms which may apply to your use of our Services.** These include our:

- (a) Website Terms of Use set out the terms and conditions for accessing our Site;
- (b) Privacy Policy which sets out how we collect, use and disclose your personal information; and
- (c) User Terms and Conditions which set out the terms to access and use of our employment directory. These Terms supplement and incorporate our User Terms and Conditions.

2. REGISTRATION AND SERVICES

2.1 You must register and create an account (**Account**) in order to access and use our Services including but not limited to advertising your business by posting a listing on the Site (**Listing**).

2.2 It is your responsibility to keep the details of your Account, including user name and password, confidential. You are liable for all activity on your Account, including any purchases made using your account details.

2.3 We reserve the right to refuse any request for our Services that we deem inappropriate, unreasonable or illegal.

2.4 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.

2.5 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the products or services provided by Third Parties.

3. JOB LISTINGS

3.1 You may create Listings to advertise: employment opportunities with your business or your business and related services you may offer to assist a user of our services with employment opportunities.

3.2 If you are creating a Listing for an employment opportunity, you must set out all relevant information including the location of the employment opportunity, key duties and type of employment.

3.3 By posting Listing advertising employment opportunities, you warrant that the availability, nature, terms or conditions or any other matter relating to the advertised employment is true, accurate and not misleading, and ensures that such listing complies with any and all applicable legislation, regulation, by-laws, codes of conduct and other laws including but not limited to:

- (a) Section 31 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any relevant state and territory fair trading laws;
- (b) *Privacy Act 1988* (Cth) including the Australian Privacy Principles as amended from time to time;
- (c) *Human Rights and Equal Opportunity Commission Act 1986* (Cth); and
- (d) all anti-discrimination and equal opportunity legislation as applicable in the State or Territory governing the location of the job identified in the Job Listings.

3.4 You acknowledge and agree that if you employ a candidate through a Listing, the Site or Services, the terms of employment is strictly a matter between you and such candidate. It is strictly and expressly not part of your agreement with us.

4. PRICE, INVOICING AND PAYMENT

4.1 If you would like your Listing to be featured on the Site, you must pay the applicable Listing fees as set out on the Site (**Listing Fees**).

- 4.2 The Listing Fees payable may differ subject to the type of service or employment opportunity you are intending to advertise. These are set out on the Site.
- 4.3 You agree to pay us the Listing Fees as set out on our Site or otherwise notified to you for our Services in the manner described when you sign up for our Services and/or create a Listing. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable). You will be required to make payment by way of credit card, PayPal or other payment methods as set out on the Site when making a purchase for the Services or as set out in our invoice to you.
- 4.4 If Listing Fees are payable upfront, the initial payment will be processed upon receipt and the Listing will not be live until payment is made.
- 4.5 If Fees are payable by Invoice, you agree to pay our Invoices by the payment date set out on the Invoice (**Payment Term**). If you do not make payment before expiry of the Payment Term, we may cease to provide the Services to you until we receive payment of the Invoice.
- 4.6 Immediately after the expiry of the Payment Term, we may charge interest at the rate of 2% per month on any amounts due but unpaid.
- 4.7 If invoices are unpaid after expiry of the Payment Term, we have the right to engage debt collection services for the collection of unpaid and undisputed debt and the right to commence legal proceedings for any outstanding amounts owed to us.
- 4.8 We reserve the right to report bad debts to independent credit data agencies.
- 4.9 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Site or are provided to you, whichever is earlier.
- 5. YOUR OBLIGATIONS AND WARRANTIES**
- 5.1 In addition to your obligations and warranties as set out in clauses 3.3 and 3.4, you warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior 12 month period.
- 5.2 You warrant that throughout the term of these Terms that:
 - (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us and provide us with information that is reasonably

- necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner. This information includes email, passwords and authorisation to access your accounts;
- (c) the information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions; and
- (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you.
- 6. OUR INTELLECTUAL PROPERTY**
- 6.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 6.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 6.3 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 6.4 You must not breach our Intellectual Property rights by, including but not limited to:
 - (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as onsale to third parties.
- 7. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 7.1 If you provide information including any Intellectual Property to us, then you:
 - (a) warrant that you have all necessary rights to provide the Intellectual Property to us;

- (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 7.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us;
 - (b) irrevocably consent to us using or applying the Intellectual Property without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

8. FEEDBACK AND DISPUTE RESOLUTION

- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

9. TERMINATION

- 9.1 Either Party may terminate these Terms, if there has been a material breach of these

Terms, subject to following the dispute resolution procedure.

- 9.2 We may terminate these Terms immediately, at our sole discretion, if:
- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
 - (b) you choose to cancel our Services;
 - (c) we consider that our working relationship has broken down including a loss of confidence and trust;
 - (d) you act in a way which we reasonably believe will bring us or our Site into disrepute;
 - (e) you provide us with incorrect payment details or any other incorrect information;
 - (f) you fail to pay an Invoice for 31 days past the payment date; or
 - (g) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe.
- 9.3 On termination of these Terms, we will remove your Listing(s) from the Site.
- 9.4 If you terminate these Terms early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.
- 9.5 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.6 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **Australian Consumer Law (ACL):** We guarantee that the Services we supply to you are rendered with due care and skill, fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or as a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from the Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 10.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: “We guarantee that the Services we supply to you

are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates."

- 10.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.5 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:
 - (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - (b) the Services being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, the use of our Services and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 10.6 **Limitation:** Our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one

hundred dollars (AUD\$100) if no such payments have been made, as applicable.

- 10.7 This clause will survive termination of these Terms.
- 11. INDEMNITY**
- 11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
 - (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation
 - (b) any breach of these Terms;
 - (c) any misuse of the Services, the Site or the Materials from or by you, your employees, contractors or agents; and
 - (d) your breach of any law or third party rights.
- 11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 11.3 This clause will survive termination of these Terms.
- 12. GENERAL**
- 12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 12.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 12.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 12.4 **GST:** If and when applicable, GST payable on the Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 12.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

- 12.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 12.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 12.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- 12.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address in your Account. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 12.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 12.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 13. DEFINITIONS**
- 13.1 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 13.2 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 13.3 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discovery, circuit layouts, trade names, trade secrets, secret process, know-how, concept, idea, information, process, data or formula, business names, company names or internet domain names.
- 13.4 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

Contact details:

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