

Grow Centre Pty. Ltd. trading as Matchup Recruitment
ACN 121 130 256
(Company)
Trading Terms and Conditions for Candidates

These Trading Terms & Conditions (“Terms”) apply (unless otherwise previously agreed in writing) to the supply of Services by the Company to a Candidate from time to time. Any supply of Services by the Company to the Candidate made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company (‘Agreement’) and any such supply does not give rise to a new or separate agreement.

1 Interpretation

In these Terms unless the contrary intention appears:

Business Day means a day on which banks are open for general banking business excluding Saturdays, Sundays and public holidays in New South Wales.

Candidate means any child care professional or nanny or babysitter introduced to the Client by the Company.

Confidential Information means information and material relating to a party which comes into the possession or knowledge of the other party, whether orally, in writing or electronically, directly or indirectly, including strategic, corporate, information about the financial and labour needs of a party, and information relating to the business, clients, members, candidates, personnel, sales, know-how and operations of a party that is marked as “confidential”, or information which the recipient knows or should reasonably know is confidential.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company’s failure to deliver the Services; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Client means the person to or for whom the Services are to be supplied by Company.

Fee means the price for the Services as advised by the Company prior to performing the Services or as agreed between the parties from time to time.

Introduction means the introduction of a Candidate to a Client.

Intellectual Property Right means any patent, registered design, patent,

trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

Placement means a written or verbal agreement between the Client and the Candidate that the Client will employ or use the services provided by the Candidate. Placement occurs as soon as the Candidate agrees to the Client’s offer of employment or engagement and shall have occurred regardless of whether or not a written contract is subsequently entered into.

Placement Application means the order form annexed to these Terms (or available online on the Company’s website) completed by the Candidate which sets out the Candidate’s qualifications and placement interest and position, including without limitation, referees, skills, experience, employment history, desired position, current First Aid Certificate and identification documents.

Privacy Requirements means the requirements under the *Privacy Act 1988* (Cth), the National Privacy Principles or Australian Privacy Principles (as current) under the *Privacy Act 1988* (Cth) and any requirement under law or industry code applicable to either party in relation to privacy, data protection, surveillance, security, direct marketing (including, without limitation, the *SPAM Act 2003* (Cth) or the handling of personal information, and any reasonable direction from the Client in relation to those matters.

Services means sourcing Candidates (through online advertising or other various means) and introducing Candidates to the Client, as agreed by the parties, from time to time.

2 Placement Application

2.1 A Placement Application submitted to Company is binding on the Company and the Candidate, if:

2.1.1 a written acceptance is signed for or on behalf of Company (including by

way of online acceptance or acknowledgement of your Placement Application); or

2.1.2 the Services are supplied by Company.

2.2 An acceptance of the Placement Application by Company is then to be an acceptance of these Terms by Company and the Candidate and these Terms will override any conditions of the Candidate. No Placement Application is binding on Company until accepted by it. Company reserves the right to reject any Placement Application by a Candidate.

2.3 A Placement Application which has been accepted in whole or in part by Company cannot be cancelled by the Candidate without obtaining the prior written approval of Company, which it may refuse in its absolute discretion.

3 Obligations

3.1 The Candidate agrees to immediately notify the Company if there has been a Placement.

3.2 The Candidate agrees to provide full and accurate details to assist with the Placement including satisfactory evidence of their identity.

3.3 The Candidate must provide all reasonably necessary and accurate information to the Company including but not limited to the Placement Application form to enable the Company to provide its Services.

3.4 The Candidate agrees and acknowledges that:

3.4.1 the Company provides an introductory service only with the intention of making an Introduction of suitable Candidates to the Client;

3.4.2 it must not engage in any conduct which is detrimental to the interests of the Company, would negatively affect the Company's relationship with the Client or is likely to bring the Company into disrepute. In particular the Candidate shall always ensure they present themselves in a neat and tidy fashion;

3.4.3 it will provide the Company with at least 5 Business Days' notice of any changes to its Placement Application or requirements. Failing to provide such notice may result in the Company not being able to provide its Services;

3.4.4 it is the Client who employs the Candidate and the Company does

not employ any of the Candidates either directly or indirectly;

3.4.5 (unless the candidate is self-employed) it is the Client that is solely and directly liable for the costs of maintaining, employing and engaging the Candidates including but not limited to, wages, leave entitlements, superannuation, payroll tax and insurances (including but not limited to workers compensation insurance) and for payment of payroll tax arising from and in relation to the Candidates;

3.4.6 the Company does not exercise any control over the Candidate during the Introduction or the Candidate's conduct during the Placement;

3.4.7 the final decision to enter into a contract with a Candidate is the sole responsibility of the Client and Candidate and the Candidate is fully responsible for negotiating the terms of their engagement with the Client including without limitation, any employment obligations or contractual responsibilities;

3.4.8 it will not enter into private arrangements with any Clients that have been introduced by the Company otherwise the Fees will be charged to the Client and the Candidate will be liable for a fee of \$500 as a genuine pre-estimate of the Company's loss for breaching this clause 3.4.8 and both will be suspended from use of the Company's Services;

3.4.9 the Candidate is responsible for satisfying itself as to the suitability of the Placement; and

3.4.10 whilst the Company will use all reasonable endeavours to ensure a Placement of a Candidate, it does not guarantee a Placement or the satisfaction with a Placement nor is it responsible for any loss, damage or liability arising in connection with a Placement.

4 Warranties

4.1 The Company makes no representation or guarantee that the Candidate will achieve a certain level of performance or achieve a certain outcome.

4.2 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Company are excluded and the Company is not liable

in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Candidate for any loss (including Consequential Loss), damage, expense or liability suffered or incurred of any nature whatsoever.

5 Limitation of Liability

- 5.1 The Company is engaged by the Client for the provision of Services and the Company does not employ or engage the Candidate in any way other than for the purposes of providing the Services to the Client.
- 5.2 For the avoidance of doubt, the Company will not be liable to the Candidate for any loss or damage as a result of incorrect information provided to the Company and the Candidate acknowledges that they are responsible for providing accurate information to the Company.

6 Intellectual Property

- 6.1 The Company retains ownership of all its Intellectual Property Rights in all work carried out by it.

7 Confidentiality

- 7.1 The Candidate agrees and warrants:
- 7.1.1 Subject to clause 7.2, it will not, either during the operation of this Agreement or at any time thereafter, use or disclose to any person or entity any of the Confidential Information of the Company, or of any related corporation (within the meaning of the *Corporations Act 2001 (Cth)*) of the Company, other than for the purpose of providing the Services.
- 7.2 The obligations in clause 7.1 do not apply to any Confidential Information which:
- 7.2.1 is in the public domain other than due to a breach of an obligation of confidence under these Terms or any other agreement; or
- 7.2.2 either party is required by law to disclose, although the disclosing party must notify the other party immediately upon becoming aware of the requirement to disclose any Confidential Information in accordance with this clause.
- 7.3 The Candidate must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information.

8 Privacy

- 8.1 The Candidate agrees to comply with the Privacy Requirements regarding personal information collected, used or disclosed by

the Company to the Candidate in connection with these Terms.

- 8.2 The Company and Candidate agrees not to use or disclose any personal information provided by the Company except for the purpose of the Services.
- 8.3 The Candidate agrees and consents to the Company's use, collection and disclosure to third parties personal information received, created or obtained in connection with this Agreement in accordance with its privacy policy available at [here](#) for the purposes of providing the Services.

9 Termination

- 9.1 Either party may terminate this agreement immediately if the other party commits any material breach of these Terms and is not capable of being rectified.
- 9.2 Otherwise, the Company may terminate this agreement at any time and for any reason whatsoever subject to the provision of written notice to the Candidate.

10 Indemnity

- 10.1 To the full extent permitted by law, Candidate will indemnify Company and keep Company indemnified from and against any liability and any loss or damage Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Candidate except to the extent that such loss or damage arose, or were caused by, the acts or omissions of the Company.
- 10.2 For the avoidance of doubt, the Candidate will indemnify the Company and hold the Company harmless against any claims, actions, demands, proceedings, liability and any loss, expenses (including reasonable legal costs and expenses) or damage the Company may sustain for becoming liable for payroll tax (including interest and penalties) and for any costs associated with any Candidates being deemed, under any law, to be employees of the Company, including but not limited to leave entitlements and superannuation.

11 General

- 11.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010 (Cth)* (**CCA**) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

- 11.2 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
- 11.3 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 11.4 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 11.5 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.
- 11.6 Each party represents and warrants to the other party that it has the power and authority to enter into these Terms and to execute the obligations assumed or imposed upon it under these Terms.
- 11.7 Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to any agency, partnership or employment relationship between the Candidate and the Company.
- 11.8 Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.
- 11.9 Clause 7,8and 10 survive termination.