

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

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Services by the Company to a Client from time to time. Any supply of Services by the Company to the Client 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:

Additional Charges includes all disbursements, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Fee, payable by the Client to Company arising out of the provision of the Services.

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 introduced to the Client by the Company.

Candidate Request Order means the order form annexed to these Terms completed by the Client which sets out the requirements that the Client has in respect of the Candidate, including without limitation, skills, experience, employment history, working hours and remuneration expectation.

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.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law, and the GST Law has the same meaning given to it in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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.

Personnel of a party means officers, employees, agents and contractors of a party.

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.

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 Order for Services

- 2.1 A Candidate Request Order given to Company is binding on the Company and the Client, if:
- 2.1.1 a written acceptance is signed for or on behalf of Company; or
- 2.1.2 the Services are supplied by Company in accordance with the Candidate Request Order.
- 2.2 An acceptance of the Candidate Request Order by Company is then to be an acceptance of these Terms by Company and the Client and these Terms will override any conditions of the Client. No order is binding on Company until accepted by it. Company reserves the right to reject any Candidate Request Order by a Client.
- 2.3 A Candidate Request Order which has been accepted in whole or in part by Company cannot be cancelled by the Client without obtaining the prior written approval of Company, which it may refuse in its absolute discretion.

3 Obligations

- 3.1 The Client agrees to immediately notify the Company if there has been a Placement.
- 3.2 The Client agrees to provide full details of the terms of the Placement including remuneration or benefits offered to a Candidate, duration of their engagement.
- 3.3 The Client must provide all reasonably necessary and accurate information to the Company including but not limited to the Candidate Request Order form to enable the Company to provide its Services.
- 3.4 The Client 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 will provide the Company with at least 5 Business Days' notice of any amendment to its Candidate requirements and the Client reserves the right to update its Fees accordingly. Failing to provide such notice may result in the Company not

being able to provide its Services to the Client;

- 3.4.3 it is the Client who employs the Candidate and the Company does not employ any of the Candidates either directly or indirectly;
- 3.4.4 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;
- 3.4.5 the Company does not exercise any control over the Candidate during the Introduction or the Candidate's conduct during the Placement;
- 3.4.6 the final decision to enter into contract with a Candidate is the sole responsibility of the Client;
- 3.4.7 the Client is responsible for satisfying itself to the suitability of the Candidate and to investigate references provided by the Candidate before offering the Candidate a Placement; and
- 3.4.8 whilst the Company will use all reasonable endeavours to refer suitable, qualified candidates to the Client, it does not guarantee the availability, the successful outcome or Client satisfaction with any Candidate nor is it responsible for any loss, damage or liability arising in a connection with a Candidate.

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 Client 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's liability is limited, to the extent permissible by law and at the Company's option, to;
- 5.1.1 the supply of the service again; or
- 5.1.2 the payment of the cost of having the services supplied again.
- 5.1.3 For the avoidance of doubt, the Company will not be liable to the Client for any loss or damage as a result of incorrect information provided to the Company and the Client acknowledges that they are responsible for undertaking their own investigations to verify all information is correct.

6 Price and Payment

- 6.1 The Client is liable to pay the Company the Fees including any Additional Charges if the Client (or its related entities) employ any Candidate that was Introduced to the Client (in any capacity, whether for permanent or temporary recruitment services), within 12 months of the Company having made the Introduction of the Candidate to the Client.
- 6.2 The Client is liable to pay the Fees irrespective of whether the Client employs or engages the Candidate presented by the Company in the nominated position or in some other alternative role.
- 6.3 If the Client employs or engages one of the Candidates that the Company put forward and they resign from their employment or engagement with the Client within the first 3 months the Company will put forward a further number candidates for the incumbent role at no additional charge. The Client is still liable to pay the full Fees for the initial placement. This offer of further candidates is contingent on there being no amount outstanding to the Company and is limited to replacement of that initial Candidate.
- 6.4 All payments are due in accordance with the payment Schedule A and within 5 days of the date of invoice. Interest is charged at the rate of 10% per annum from the expiry of that period until the date payment is received by Company.
- 6.5 Any consideration or amount payable under this Agreement is exclusive of GST.
- 6.6 If the Client is in default, Company may at its option withhold the provision of any further Services without prejudice to any of its existing rights.
- 6.7 All amounts payable by the Client under these Terms must be paid without set-off or counter claim of any kind.

- 6.8 The Company reserves the right to vary its Fees periodically on provision of 10 Business Days' notice to you.

7 Intellectual Property

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

8 Confidentiality

- 8.1 The Client agrees and warrants:
- 8.1.1 Subject to clause 8.2, 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.
- 8.2 The obligations in clause 8.1 do not apply to any Confidential Information which:
- 8.2.1 is in the public domain other than due to a breach of an obligation of confidence under these Terms or any other agreement; or
- 8.2.2 the Client is required by law to disclose, although the Client must notify the Company immediately upon becoming aware of the requirement to disclose any Confidential Information in accordance with this clause.
- 8.3 The Client must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information.

9 Privacy

- 9.1 The Client agrees to comply with the Privacy Requirements regarding personal information collected, used or disclosed by the Company to the Client in connection with these Terms.
- 9.2 The Client agrees not to use or disclose any personal information provided by the Company except for the purpose of receiving the Services.
- 9.3 The client agrees that the Company may use, collect and disclose 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.
- 9.4 If the Client becomes aware of any actual or alleged breach of the privacy laws concerning information disclosed by the Company to the Client or by the Client to

the Company, then the Client must notify the Company immediately and comply with any reasonable directions of the Company with respect to such breach.

10 Termination

- 10.1 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.
- 10.2 Otherwise, the Company may terminate this agreement at any time, subject to the provision of 30 days written notice.
- 10.3 Termination of this Agreement does not relieve the Client of its obligation to pay the Company any outstanding Fees due and payable.
- 10.4 If the Client terminates this contract prior to any Introductions of Candidates by the Company, the Client may be subject to an administration fee for reasonable costs incurred.

11 Trustee Capacity

If Client is the trustee of a trust (whether disclosed to Company or not), Client warrants to Company that:

- 11.1 Client enters into this Agreement in both its capacity as trustee and in its personal capacity;
- 11.2 Client has the right to be indemnified out of trust assets;
- 11.3 Client has the power under the trust deed to enter into this Agreement; and
- 11.4 Client will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

12 Indemnity

- 12.1 To the full extent permitted by law, Client 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 Client or its representatives except to the extent that such loss or damage arose, or were caused by, the acts or omissions of the Company.
- 12.2 For the avoidance of doubt, the Client 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) in relation to Fees payable under this Agreement 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.

13 General

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 13.5 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.
- 13.6 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.
- 13.7 Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to any agency, partnership or employment relationship between the Client and the Company.
- 13.8 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.

13.9 Clause 8,9and 12 survive termination.

Schedule A – Payment Instalments Table