

Labour Hire Terms & Conditions of InCrew Group Pty Ltd

By engaging InCrew Group Pty Ltd (ABN 56 679 675 122) to perform the Services, the Client agrees to these terms and conditions.

1. Definitions

- 1.1. **Cancellation Fee** shall mean the cancellation fee specified in the Quote, or as separately notified by InCrew Group to the Client.
- 1.2. **Claim** means any complaint, claim, notice, demand, action, proceeding, litigation, investigation, judgement, damage, loss, cost, expense or liability arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or equity (including equitable claims such as estoppel) and whether involving a third party or a party to the Contract.
- 1.3. **Client** means the party named as such in the relevant Quote.
- 1.4. **Contract** means the contract formed between InCrew Group and the Client created by the acceptance of the Proposal by the Client, on the terms and conditions herein.
- 1.5. **Confidential Information** means any information and records belonging to a party (or a company related to the party, such as a subsidiary or another company in a “group” of companies (**Disclosing Party**) in whatever form including, without limitation, forms, documents processes, statements, drawings, data and copies of extracts made from that information or data which is:
- (a) information which the Disclosing party indicates or has indicated is confidential or which might reasonably be considered confidential to the Disclosing Party;
 - (b) information which by its nature might be reasonably understood to be confidential to have been disclosed to the other party in confidence;
 - (c) information which is commercially valuable or would be of commercial value to a competitor of the Disclosing Party;
 - (d) information about the Disclosing Party’s customers, markets, suppliers, intellectual property and contractual arrangements;
 - (e) information which is found in the Disclosing Party’s tender documents, manuals or policies; and
 - (f) information which relates to the Disclosing Party’s financial affairs, including performance and profitability reports and margins, and the price the Disclosing Party charges for its products and services,
- but shall not include information and records that are, or after the date of the Contract become, available in the public domain (other than through a breach of the Contract).
- 1.6. **Consequential Loss** means any financial, economic or consequential loss (whether direct or indirect) including (without limitation): loss of actual or anticipated profits or revenues; loss by reason of business interruption; shutdown or non-operation; loss of goodwill, opportunity, future contracts, productivity of wasted overheads; increased capital or financing, increased costs of borrowing; or exemplary or punitive damage, whether caused by or in relation to breach of the Contract (including any indemnity), warranty, tort, product liability or strict liability.
- 1.7. **Force Majeure Event** means any occurrence or omission outside of InCrew Group’s reasonable control, as a direct or indirect result of which InCrew Group is prevented from or delayed or disrupted in performing its obligations, and includes (without limitation):

- (a) Act of God and natural events like inclement weather, storms, cyclones, drought, fire, flood, tsunami, lighting, earthquake, landslide or explosion;
- (b) national emergency, war, revolution, embargo, riot, terrorist act, civil disturbance, epidemic, quarantine, radiation or radioactive contamination;
- (c) strike or other labour dispute, breakdown of plant, machinery or equipment, or a shortage of transport, fuel, power or plant, machinery, equipment, materials, or labour;
- (d) applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions, action or inaction of government or any other competent authority including (without limitation) a prohibition notice issued by a department, court order, or law taking effect after the date of this document;
- (e) any act or omission by the Customer or a third party.

1.8. **InCrew Group** means InCrew Group Pty Ltd (ABN 56 679 675 122).

1.9. **Intellectual Property Rights** means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future (including patent, design, trademark, copyright or other protected right).

1.10. **Insolvency Event** means official management, appointment or administrator and/or receiver, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme of composition or arrangement of creditors, insolvency, bankruptcy or any similar procedure.

1.11. **Placement Fee** shall mean the placement fee specified in the Quote, or as separately notified by InCrew Group to the Client.

1.12. **Permanent Placement Fee** shall mean the permanent placement fee specified in the Quote, or as separately notified by InCrew Group to the Client.

1.13. **Price** means the prices or rates specified in the Quote, and shall include any changes to such prices or rates pursuant to any Variation.

1.14. **Quote** means the quote given by InCrew to the Client which shall specify the Services, Price, etc and includes any schedules, attachments, appendices, exhibits or similar.

1.15. **Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

1.16. **Services** means the supply of the Workers as specified in the Quote or as otherwise agreed in writing between the parties.

1.17. **Site** means the site identified in the Quote, or other location as agreed in writing between the parties.

1.18. **Variation** means to vary the Services by carrying out additional Services, omitting any part of the Services, or changing the scope of the Services.

1.19. **Workers** means any employees, agents, contractors and subcontractors of InCrew Group.

2. Formation of Contract

2.1. Following receipt of the Client's request for Services, InCrew Group will issue the client a Quote that sets out:

- (a) The Price for the requested Services; and

(b) Any other relevant details or information regarding the requested Services.

2.2. Upon acceptance of the Quote by the Client, the Quote together with these terms and conditions shall form a legally binding contract between the parties (the **Contract**). Each accepted Quote constitutes a separate Contract between InCrew Group and the Client.

2.3. The Client may accept the Quote by:

(a) expressly, in writing or verbally, advising that it accepts the Quote;

(b) by conduct, such as (not exhaustive):

(i) giving InCrew Group instructions in relation to the provision of the Services pursuant to the Quote; or

(ii) providing InCrew Group with the Client's purchase order (or equivalent).

2.4. If the Client accepts the Quote, the Client acknowledges and agrees that it only does so on the basis of the terms and conditions outlined herein.

2.5. If the Client accepts the Quote, but proposes their own terms and conditions (such as by way of issuing the Client's purchase order), then for clarity and to avoid doubt:

(a) InCrew Group does not accept such counter-offer, whether express, implied or by conduct (notwithstanding any act, omission or representation of InCrew Group, any Related Body Corporate, or any of its Workers, such as if they sign such terms and conditions provided); and

(b) such terms and conditions have no legal effect, shall not be binding on InCrew Group and will not constitute part of the Contract;

(c) the terms and conditions herein shall continue to apply,

unless otherwise expressly agreed in writing by InCrew Group.

2.6. For clarity and to avoid doubt, if the Client does not accept the terms and conditions herein, it should not accept the Quote. The Client will otherwise be deemed to have accepted the terms and conditions herein.

2.7. Any variation or amendment to these terms and conditions shall not be binding until expressly agreed in writing by both InCrew Group and the Client, and until such time, the terms and conditions herein shall continue to apply.

2.8. In the event that InCrew Group and the Customer negotiate a separate contract for the provision of the Services pursuant to the Quote, the terms of the separate contract shall apply to the extent of any inconsistency with these terms and conditions. For clarity and to avoid doubt, the terms and conditions herein shall otherwise continue to apply in the event the parties do not enter into any separate contract for the provision of the Services pursuant to the Quote.

3. Term

3.1. The Commencement Date for a Contract will be the earlier of:

(a) The date on which the Client notifies InCrew Group that it accepts the Quote issued; or

(b) The date that InCrew Group commences the Services as agreed between the parties.

3.2. A Contract commences on the Commencement Date and will continue until completion of all applicable Services, unless terminated earlier in accordance with the Contract.

4. Services

- 4.1. InCrew Group will cause the Services to be provided to the Client at the Site.
- 4.2. InCrew Group provides no guarantee or warranty that it will be able to provide the number of Workers requested by the Client at any given time. InCrew Group will use its best endeavours to provide the Workers to the Client.
- 4.3. InCrew Group reserves the right to replace the Workers from time to time with other Workers who are suitably qualified. InCrew Group will endeavour to provide as much notice as reasonably practicable to the Client of such replacement.
- 4.4. InCrew Group shall perform the Services as an independent contractor and nothing in the Contract or in the relationship of the parties shall be construed as creating a joint venture, partnership, association, fiduciary relationship, company or any other legal entity, or the relationship of an employer and employee between InCrew Group and the Client.

5. Price and Invoicing

- 5.1. The Client shall pay the Price specified in the Quote.
- 5.2. The Price is inclusive of all salary, superannuation, income tax, payroll tax, annual leave, sick leave, workers' compensation insurance premiums and all other costs arising from or relating to the employment of the Worker by InCrew Group.
- 5.3. Travelling or other expenses agreed at the time of engagement will also be invoiced to the Client.
- 5.4. Any engagement of a Worker must be for a minimum period of 4 consecutive hours or more, unless otherwise agreed. If the Client cancels or postpones the engagement of a Worker, the Client will be liable to pay the 4-hour minimum period, unless otherwise agreed.
- 5.5. The Price remain payable if the Worker is engaged in a position other than the one originally intended by the Client or InCrew Group.
- 5.6. InCrew Group will be responsible for payment in relation to any Worker of remuneration, superannuation, payroll tax, annual leave, sick leave, workers' compensation insurance premiums and all other costs arising from or related to the employment or engagement of the Worker by InCrew Group (such as bonuses, benefits in kind (including a motor vehicle)), including being responsible for PAYG tax and the issue of group certificates. InCrew Group will comply with relevant laws and requirements of relevant authorities in respect of the employment by it of the Worker.
- 5.7. If after the date of the Contract there is:
 - (a) the adoption, enactment or application to InCrew Group or the Client any law not existing, foreseeable or otherwise applicable to InCrew Group or the Client on the date of the Contract; or
 - (b) a change in law (including the application or interpretation of a law) or any procedure or practice of any applicable authority or regulatory body; or
 - (c) an order, judgement, declaration or determination of any kind being made by any Court, tribunal, commission, authority, department, agency or other body (including but not limited to the Fair Work Commission) against or otherwise applicable to InCrew Group and its Workers including but not limited to in respect of relevant labour legislation,(each a **Change in Law**),

which increases the costs of supplying the Services under the Contract, then InCrew Group is entitled to an increase in the Price for any increase in the cost that is or will be incurred by InCrew Group as a result of the Change in Law.

- 5.8. The Client shall not have the ability to set-off amounts owing to InCrew Group against any amounts InCrew Group may be or become liable to pay to the Client.

6. Invoicing and Payment

- 6.1. Invoices will be submitted by InCrew Group on a frequent (usually weekly) basis and payment of the invoices by the Client shall be within fourteen (14) days from the date of the relevant invoice.
- 6.2. The Price invoiced to the Client will be calculated on the basis of the working hours recorded on the timesheet for each Worker. The Client agrees to have these timesheets checked and authorised by an appropriate person within its organisation. Such timesheets must then be submitted to InCrew Group promptly on a weekly basis, or as otherwise agreed between the parties.

7. GST

Unless expressly stated to the contrary, the Price and any amounts payable or which may become payable under the Contract is exclusive of GST. The Client shall pay any GST applicable to any supply in terms of the GST Act.

8. Job Requirements and Suitability

- 8.1. The Client must clearly and accurately instruct InCrew Group in writing of the job requirements relevant to the engagement of the Worker. Should there be any changes to the job requirements at any time the Client must advise InCrew Group immediately.
- 8.2. InCrew Group will:
- (a) make reasonable endeavours to ensure that the Worker suits the requirements of the Client (including holding any relevant tickets, qualifications and/or certifications); and
 - (b) provide to the Client information concerning a Worker that is accurate to InCrew Group's knowledge, information and belief;

except to that extent, the Client acknowledges that neither InCrew Group nor its servants or agents will be responsible for the accuracy of information concerning a Worker, whether the information concerns the employment history of a Worker, qualifications, personal circumstances or otherwise, and accordingly InCrew Group and its directors, servants or agents will not be responsible for any such inaccuracy.

- 8.3. The Client must not:
- (a) allocate tasks or job responsibilities to any Worker, or require any Worker to perform or participate in work, other than in accordance with the job requirements instructed as per clause 8.1; and
 - (b) request any Worker to perform or participate in any work or use any equipment with which they are unfamiliar or in respect of the use of which they are unqualified or have not received prior adequate training.

9. Industrial Relations

- 9.1. The Client is required to notify InCrew Group of any industrial instruments (i.e. any modern award or enterprise agreement) applicable to the Site where a Worker is to perform Services.

9.2. InCrew Group may increase the Price in accordance with any increase in labour costs required by any modern award, enterprise agreement or other industrial instrument (whether current or future) or as otherwise required by law.

10. Occupational Health and Safety

10.1. All Workers, whilst engaged by the Client, are under the day-to-day care, direction, control and supervision of the Client.

10.2. The Client is to be responsible for the proper and adequate supervision, direction and instruction of the Workers at all times during the engagement. The Client is also responsible to ensure that the Workers are properly instructed and trained to carry out the tasks allocated to them in a safe manner.

10.3. The Client must:

- (a) ensure that Workers comply with all applicable work health and safety legislation, Australian Standards relating to work health and safety, codes of practice and other requirements of the Client and/or Site;
- (b) provide a safe working environment relating to the health, safety and welfare of the Workers. This includes (without limitation) laws relating to occupational health and safety, discrimination and harassment;
- (c) provide induction, training and safety consumables to the Workers where appropriate, including to provide training of any policies and procedures which relate to the Site;
- (d) inform the Workers promptly of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard;
- (e) immediately notify InCrew Group of any incident, accident or injury with respect to any Worker;
- (f) immediately notify InCrew Group of any incident or event that may give rise to a claim under any insurance policy, statutory indemnity or self-insurance arrangement that relates to the Worker whether such policy, indemnity or arrangement is held or established by either party;
- (g) assist in the rehabilitation, and return to work, of any Worker injured, including by the provision of suitable/alternative duties.

11. Indemnity

11.1. The Client must release and indemnify InCrew Group and its officers, employees and agents from and against all Claims that may arise as a result of or in connection with:

- (a) any damage to any property of any person;
- (b) death or injury to any person;
- (c) a breach by the Client of any term of the Contract;
- (d) a breach by the Client of a relevant law in the course of, or caused by, the performance of its obligations under the Contract,

but the Client's liability to indemnify InCrew Group will be reduced proportionately to the extent that the damage, death, injury or breach is caused or contributed to by InCrew Group.

12. Warranties

- 12.1. InCrew Group does not give and is not bound by or subject to any condition, term, warranty, representation or obligation in connection with the supply of the Services, whether such condition, term, warranty, representation or obligation is implied by virtue of any statute, the common law, equity, custom or trade usage or otherwise.
- 12.2. This clause does not exclude, restrict or modify any condition, term, warranty, representation or obligation which cannot lawfully be excluded, restricted or modified. If any condition, term, warranty, representation or obligation is implied in the Contract and cannot be lawfully excluded, restricted or modified then, to the extent permitted by law, the liability of InCrew Group for breach of that condition, term, warranty, representation or obligation is limited to at its sole discretion, re-performing the Services or payment of the cost of re-performing the Services.

13. No Consequential Loss

Notwithstanding any other provision of the Contract, InCrew Group shall not be liable to Client, or any other party beneficially entitled under or pursuant to the Contract (including under any indemnity), for any Consequential Loss.

14. Limitation of Liability

Notwithstanding any other provision of the Contract, InCrew Group's total liability arising out of or in respect of the Contract is limited to an amount equal to the Price, provided however that the limit shall not apply to a claim for personal injury or damage to property.

15. Insurance

- 15.1. The Client shall effect and maintain the following insurances at all times during the Services:
- (a) insurance with respect to the Client's liability to InCrew Group pursuant to any indemnity herein;
 - (b) insurance against all third party risks including liability for damage or injury of any kind to any person or property and also against other risks to the full extent required by law by a policy insuring for the benefit of InCrew Group and the Client;
 - (c) public risk insurance for an indemnity (including damage to property of any person) of not less than twenty million dollars (\$20,000,000) per incident or such other amount as InCrew Group may from time to time reasonably stipulate;
 - (d) such other insurable risks that InCrew Group may reasonably stipulate.
- 15.2. In respect of the insurances to be effected and maintained by the Client, such insurance is to cover the respective liabilities of InCrew Group and the Client for personal injury, property damage, consequential losses arising from the Services and all other losses of whatsoever nature arising out of the Services.
- 15.3. The Client shall provide InCrew Group with, if required, evidence of such insurance policies.

16. Non-Solicitation

- 16.1. The Client must not employ, or solicit the employment of any of the Workers while they are engaged in the performance of the Services or within 6 months following completion of the Services.

- 16.2. If any of the Workers cease work for InCrew as a result of the Client's breach of clause 16.1, the Client must:
- (a) Pay to InCrew Group the applicable Placement Fee; and
 - (b) Allow any further reasonable time that may be required by InCrew Group to replace the relevant Worker in relation to the provision of the Services.

17. Cancelled Engagements

If, after a request has been made by the Client for InCrew Group to supply Worker(s), but prior to the Worker(s) performing any services for the Client, the Client decides for any reason not to proceed with the engagement, the Client is liable to pay InCrew Group the Cancellation Fee.

18. Permanent Placement

- 18.1. If the Client wishes to employ or engage a Worker directly in a permanent capacity, the Client will be liable to pay InCrew Group the Permanent Placement Fee.
- 18.2. If a Permanent Placement Fee was not given by InCrew Group, then the Permanent Placement Fee shall be the amount which is a multiple of 100 times the hourly rate at which the Worker was last engaged by the Client from InCrew Group.

19. Disputes

In the event of any claim, industrial action or dispute that involves or affects any Worker/s, the Client agrees to assist and do all things reasonably required by InCrew Group to resolve the claim, industrial action or dispute.

20. Performance and Conduct Concerns

- 20.1. The Client must, as soon as is practicable, report in writing to InCrew Group if any performance or conduct concerns arise in relation to any Worker.
- 20.2. The Client must only communicate directly with InCrew Group in relation to the performance or conduct of any Worker.
- 20.3. In the event the Client wishes to request the replacement of a particular Worker, it must:
- (a) speak to InCrew Group directly about the replacement; and
 - (b) not communicate anything to the Worker indicating that their engagement with the Client will be cancelled.
- 20.4. Where the Client is unsatisfied with a Worker, but does not wish to request a replacement, it must consult with InCrew Group as soon as practicable. InCrew Group will take any appropriate disciplinary action in relation to any Worker after consultation with the Client.

21. Termination for Default or Insolvency

- 21.1. Either party may terminate the Contract immediately upon notice if the other party:
- (a) Suffers an Insolvency Event; or
 - (b) Commits any irremediable breach of the Contract.

- 21.2. Either party must not exercise any right to suspend or terminate the Contract due to a remediable breach, without first giving written notice to the other party (**the Defaulting Party**) detailing the nature of the breach, and giving the other party the opportunity to remedy the breach within a reasonable time (to be stated in the notice), which must not be less than fourteen (14) days. If the Defaulting Party does not remedy the breach within such stated timeframe, then the innocent party may suspend or terminate the Contract.

22. Force Majeure

If InCrew Group is affected by a Force Majeure Event, InCrew Group will not be in breach of the Contract for failing to perform its obligations under this Contract and those obligations are suspended to the extent to which they are affected by the relevant Force Majeure Event, as long as the Force Majeure Event continues.

23. Confidential Information

- 23.1. All information supplied (by way of paper, electronic or other means) to the Client by InCrew Group in relation to any Worker is confidential and must not be disclosed by the Client to any third party without the prior written consent of InCrew Group.
- 23.2. Each party shall keep the other's Confidential Information confidential, and must ensure that they and their employees and subcontractors do not, either during the term of the Contract or after the expiry or earlier termination of the Contract, disclose or give to any person Confidential Information, or use the Confidential Information for a purpose unrelated specifically to performing the Contract, except:
- (a) with the prior written consent of the party, which may be given or withheld in the absolute discretion of such party, or given subject to conditions;
 - (b) if required to be disclosed by law or any stock exchange rules;
 - (c) if required to be disclosed in connection with legal proceedings;
 - (d) to the officers, employees and subcontractors of the receiving party on a "need to know" basis for the purpose of performing the Contract and provided such persons are bound by confidentiality obligations on terms which mirror the intention of this clause;
 - (e) to the receiving party's professional advisers for the purposes of obtaining advice (including, for example, solicitor, accountant, insurance broker) provided such adviser/s are bound by duties of confidentiality which mirror the intention of this clause.

24. Intellectual Property

All Intellectual Property Rights in the Services, and in the processes used to produce the Services (including new intellectual property) remains vested in InCrew Group and the Customer must not use or exploit any Intellectual Property Rights of InCrew Group without the prior written consent of InCrew Group.

25. Dispute Resolution

- 25.1. Until the relevant provisions of this clause have been complied with, no party shall make any formal complaint, commence any action, bring any proceedings or seek any relief or remedy in a court, tribunal or by arbitration, except for any urgent interlocutory or equitable relief in respect of the Contract.
- 25.2. Any issue, dispute, controversy or claim (**Dispute**) arising out of or in relation to the Contract cannot be resolved by a meeting of the representatives of each party within 20 business days of such meeting, then the Dispute may be submitted by either party to mediation. The mediation will be conducted in accordance with the Australia Dispute Centre's Mediation Guidelines in force at the time the Dispute is referred. Where the Dispute cannot be finalised within 60 business days of the mediation, either party may commence legal proceedings.

26. Duty to Mitigate and Act Reasonably

Notwithstanding any other provision of the Contract, including any indemnity, each party shall have a duty to mitigate their losses and act reasonably.

27. General

- 27.1. The terms and conditions of the Contract shall be governed and construed in accordance with the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.
- 27.2. Where any provision of the Contract is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Contract.
- 27.3. The indemnities and assumptions of liability contained herein will continue in full force and effect notwithstanding the termination of the Contract whether by expiration of time or otherwise.
- 27.4. The rights and remedies herein are cumulative and do not exclude any rights or remedies provided by any applicable laws.
- 27.5. The failure by InCrew Group to insist upon strict performance of any of the terms herein or any delay by InCrew Group in exercising any of its rights shall not constitute or be deemed a waiver or variation by InCrew Group of any of the terms or a waiver of any default or remedy.
- 27.6. The Contract constitutes the entire agreement between the parties and both parties agree that there are no other terms, representations or understandings except those set out herein.
- 27.7. If any provision of these terms and conditions is unenforceable, illegal or void then it is severed and the rest of the terms and conditions remain in force.