

Staff Augmentation Services Terms and Conditions

1 Supply

- 1.1 NTT Australia Pty Ltd (ABN 65 003 371 239) ("**NTT**") agrees to supply the client named in the offer ("**the Client**") with the employees and contractors possessing the skills described in NTT's offer ("**the NTT Personnel**") to work under the Client's direction and control.
- 1.2 The NTT Personnel will perform the role as hired labour ("**the Work**") at the site ("**the Site**") in consideration for the service fees ("**the Service Fee**") described in the document offering these services ("**the Offer**") on these terms and conditions ("**these Terms**"). These Terms and the Offer constitute the "**Agreement**" for the supply of the services ("**the Staff Augmentation Services**").

2 Acknowledgement

- 2.1 The Client acknowledges that it is responsible for the selection, induction, direction and supervision of the NTT Personnel and that NTT is not responsible for the adequacy or otherwise of the NTT Personnel for the Client's specific intended purpose. Actions taken by (or omissions of) the NTT Personnel at the Client's direction will be treated as the Client's own actions (or omissions).

3 Term

- 3.1 The Agreement will commence on the Commencement Date set out in the Offer, and will terminate on completion of the Work or if a date is specified, on the Termination Date set out in the Offer, or on such other date as may be agreed by the parties in writing. If the Client wishes to extend the Agreement, it must give NTT written notice requesting an extension and the duration of the extension. If the parties agree to extend the Agreement beyond the Termination Date, NTT will issue a renewal letter and the varied Agreement will continue on same terms and conditions (all consequential changes having been made) as are contained in the Agreement.

4 Purchase Orders

- 4.1 A purchase Order ("**PO**") for Staff Augmentation Services issued by the Client constitutes an acceptance by the Client of the Agreement. Any amendments to the Agreement must be approved by NTT in writing to be effective. Only these Terms and the Offer (not other terms and conditions which may be attached to or incorporated in a PO) apply to the agreement between the parties. Acceptance of a PO by NTT will not be acceptance of any such terms or conditions.

5 Fees and Payment

Timesheets

- 5.1 NTT will deliver timesheets to the Client on Mondays (or Tuesday if the Monday is a public holiday) for the preceding week's Work, itemising the hours worked per day by the NTT Personnel. If the Client does not agree with the content of the timesheet, the Client must dispute any of the particulars in the timesheets before 5:00PM on the following Friday, failing which the timesheet(s) will be deemed to be approved.
- 5.2 In the event of a dispute as to the accuracy of a timesheet the Client must specify the disputed items and reason for the dispute. NTT will then work with the Client in good faith to resolve the dispute. If the parties are unable to resolve the dispute within seven (7) days, either party may suspend the Agreement until such time that the dispute is resolved under clause

Charges

- 5.3 Subject to clause 5.6, NTT will only charge the Client for the effective hours worked by NTT Personnel, which means hours actually engaged in performing the Work and (unless otherwise agreed) excludes meal breaks, travel time to the Client's (or its nominee's) premises and holiday and other leave entitlements.

Purchase Orders and Billing

- 5.4 The Client must raise a PO for the engagement. At the end of each agreed billing cycle ("**Billing Period**") NTT will invoice the Client against the PO for the engagement as per the approved timesheets. NTT will track the expenditure against the PO and the Client must do the same. Where the engagement will exceed the balance of the PO the Client must issue a new (or amended) PO to cover the charges for the balance of the engagement.

Payment Terms

- 5.5 Payment terms are strictly 30 days from the date of invoice. The Service Fees and any expenses will be invoiced at the end of each Billing Period and on completion. Any discount which NTT may have granted to the Client is forfeited by the Client if payment is not made to NTT by the due date.

Added costs

- 5.6 If the Work is performed outside a metropolitan area, or if travel is required by the Client as part of the Work, the Client must pay the reasonable travel and accommodation costs incurred by NTT in the supply of the Staff Augmentation Services.

6 Taxes and GST

- 6.1 The amount payable to NTT is inclusive of existing taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Staff Augmentation Services. The Client is liable for any new or varied taxes, duties or charges imposed subsequent to NTT's quotation or proposal or to the Agreement in respect of the supply of the Staff Augmentation Services. NTT will issue a valid tax invoice where GST is to be recovered.

7 Interest

- 7.1 Any amount not paid by the due date for payment will carry interest from that date until payment is made in full at the rate being 2 percentage points above the overdraft rate charged on overdraft accounts over \$100,000 by the ANZ Bank from time to time.

8 Superannuation

- 8.1 Subject to any requirement at law to the contrary, NTT acknowledges that the Client has no responsibility in relation to the payment of superannuation, workers' compensation, taxes, sick leave, annual leave, employee benefits and any other payments incidental to employment in respect of the NTT Personnel. NTT will indemnify the Client and keep the Client indemnified from any liability, costs, claims or damages arising from or with regard to workers' compensation insurance premiums or payroll taxes, or Superannuation Guarantee Levy costs in respect of the NTT Personnel.

9 Warranty

- 9.1 NTT warrants that the NTT Personnel have the necessary knowledge, skill, experience and ability to perform the Work.

10 Site Attendance

- 10.1 The NTT Personnel will attend at the Site or at such other place or places as the parties may agree.

11 Security

- 11.1 NTT will ensure that the NTT Personnel abide by the Client's security and other reasonable requirements notified to them by the Client when they are in attendance at the Site.

12 No Poaching

- 12.1 During the term of the Agreement and for 6 months after the term, the Client must not employ or solicit for employment any NTT Personnel.
- 12.2 If the Client breaches the provisions of this clause 12, the Client must pay NTT an amount equal to 25% of the annualised rate that NTT pays to the relevant NTT Personnel as liquidated damages for the loss suffered by NTT as a result of the breach, which amount the parties acknowledge to be a genuine pre-estimate of the loss so suffered and not a penalty.
- 12.3 Each party acknowledges that the restriction specified in this clause 12 is in the circumstances reasonable and necessary to protect NTT's legitimate interests.

13 Confidentiality

- 13.1 NTT and the Client agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "confidential information" means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain otherwise than as a result of an unauthorised disclosure by NTT or the Client.

14 Intellectual Property

- 14.1 Unless otherwise agreed in writing, all intellectual property rights in materials created by the NTT Personnel while performing the Work will vest in the Client on their creation.

15 Dispute Resolution

Application of procedure

- 15.1 Each of the parties shall use their reasonable endeavours to co-operatively resolve a dispute. Discussions between the parties.
- 15.2 If a dispute arises, the dispute shall be referred to a nominated representative from each party for resolution.

Referral to a Panel/Executive Panel

- 15.3 If the dispute is not resolved by parties' nominated representatives within 5 Business Days of such a referral in accordance with clause 15.2, the dispute shall be referred to a panel ("**Panel**") for resolution. Each party shall nominate 2 representatives for the Panel within 5 Business Days of the referral to the Panel in accordance with this clause 15.3.
- 15.4 If the dispute is not resolved by the Panel within 10 Business Days of such referral, the Panel shall within 3 Business Days refer the dispute for resolution to an executive panel comprising the CEO of each party (or his or her nominee) and the members of the Panel ("**the Executive Panel**").

Procedure

- 15.5 The Panel and the Executive Panel shall determine their own procedures for the resolution of the dispute.
- 15.6 Decisions of the Panel or the Executive Panel may only be made by unanimous agreement of the members of the Panel or the Executive Panel, as the case may be.
- 15.7 Any decision of the Panel or the Executive Panel shall be binding on the parties.

Condition precedent to litigation

- 15.8 Neither party shall commence legal proceedings unless the parties have undertaken the process set out in clauses 15.2, 15.3 and 15.4, and those processes have failed to resolve the dispute.

Performance of obligations pending resolution of dispute

- 15.9 Prior to the resolution of a dispute, the parties shall continue to perform their respective obligations to the extent that those obligations are not the subject matter of the dispute.
- 15.10 Nothing in this clause 15 shall prevent a party from choosing to perform an obligation which is the subject matter of the dispute.

Injunctive Relief

- 15.11 Nothing in this clause prevents either party from seeking urgent injunctive relief against the other party.

16 Termination

- 16.1 If the Client:
- defaults in any payment or breaches any terms of the Agreement;
 - becomes unable to pay its debts as and when they fall due;
 - fails to allocate a NTT Personnel to perform Work within a reasonable time of arrival at a Site; or
 - commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,
- NTT may without prejudice to any of its rights or remedies under the Agreement or otherwise, by notice to the Client:
- suspend the supply of further services and require payment in advance for future services;
 - terminate the Agreement;
 - claim immediate payment of all moneys due by the Client in respect of all Staff Augmentation Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by NTT; and/or
 - continue to enforce its rights and recover from the Client such payments and any other amounts owing as and when they fall due.
- 16.2 The Client party may terminate the Agreement immediately if NTT:
- becomes unable to pay its debts as and when they fall due; or

- (b) commits an act of bankruptcy or enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up.

17 No Representations

- 17.1 The Client acknowledges that NTT has not made any warranty or representation, express or implied, in relation to the Staff Augmentation Services, including whether they are suitable for a particular purpose (whether such purpose was made known to NTT or not), except as provided in the Agreement.

18 No Implied Terms

- 18.1 To the extent permitted by law, all express or implied warranties, representations, statements, terms and conditions relating to NTT or the provision of Staff Augmentation Services under the Agreement, not expressly set out in the Agreement, are excluded from the agreement between the parties. If a condition or warranty is implied into this Agreement by a law which cannot be excluded, liability is limited at the option of NTT, to the supply of the defective Staff Augmentation Services again or the payment of the cost of having the defective Staff Augmentation Services supplied again.

19 Limitation of Liability

Consumer Guarantees

- 19.1 If clause 102 of the Australian Consumer Law (under the Competition and Consumer Act 2010 (Cth)) applies to NTT's goods and/or services:
- (a) they come with guarantees that cannot be excluded under the Australian Consumer Law;
 - (b) for major failures in a service, the Client is entitled:
 - (i) to cancel its service contract with NTT; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value;
 - (c) for major failures with goods the Client is also entitled to choose a refund or replacement;
 - (d) if a failure in the goods or a service does not amount to a major failure, the Client is entitled to have the failure rectified in a reasonable time and if this is not done the Client is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
 - (e) the Client is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Liability under the Agreement

- 19.2 NTT's aggregate liability, whether arising from breach of contract, negligence or any other tort, breach of warranty, under an indemnity, or statute, in equity or otherwise is limited to an amount equal to the total amount paid to NTT for the Staff Augmentation Services.
- 19.3 Nothing in clause 19.2 operates to limit NTT's liability for:
- (a) claims for death or personal injury;
 - (b) breach of confidentiality; or
 - (c) third party claims for infringement of intellectual property rights.
- 19.4 NTT is not liable for any indirect, incidental, special or consequential loss or damage, or for loss of use, revenues, profits, goodwill, bargain or loss of opportunities, anticipated savings, or loss of or corruption of data, whether arising from breach of contract, negligence or any other tort, in equity, or under an indemnity, warranty or otherwise, and whether or not NTT was aware of the possibility of such loss or damage.

20 Variation

- 20.1 Any variation to the Agreement must be in writing. Variations to any of the Staff Augmentation Services agreed to be supplied will be charged by NTT at its then current rates for those additional services, unless otherwise agreed in writing.

21 21. General

- 21.1 Notices must be in writing and sent by mail, email, hand delivery or transmitted by facsimile to the address, email address or facsimile number of the receiving party and are deemed delivered, in the case of:
- (a) hand delivery, on delivery;
 - (b) posting, three days after dispatch;

- (c) facsimile, on completion of complete and legible transmission;
 - (d) email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed, whichever happens first.
- 21.2 No leniency, indulgence or extension of time granted by NTT to the Client will prejudice any of NTT's rights in any way or constitute a waiver of any of NTT's rights.
- 21.3 If any of the terms of the Agreement are for any reason declared to be or become unenforceable, invalid or illegal, the remaining terms will remain in full force and effect.
- 21.4 The Agreement is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 21.5 The Agreement constitutes the entire agreement between the parties on the subject matter and supersedes any previous understanding or agreement on that subject matter.
- 21.6 Except for the payment of Service Fees, neither party will be liable for any delay or failure to perform its obligations under the Agreement if the failure or delay is due to circumstances beyond its reasonable control, including but not limited to acts of any governmental body, acts of god, lightning strikes, earthquakes, floods, fires, other natural disasters, explosions or accidental damage, acts of war, acts of public enemies, terrorism, riots, civil commotions, malicious damage, sabotage, strikes or communication network and facility interruptions or failures. Either party may terminate the Contract by written notice to the other party if a force majeure event continues for a period of 60 days or more from the date that the force majeure event commenced.