

**AU PAIR TERMS AND CONDITIONS****1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) form the agreement between Niche AuPairs Pty Ltd ABN 37 605 564 485 (referred to as “**we**”, “**us**” or “**our**”), and you, the au pair seeking to register as an au pair with us (referred to as “**you**” or “**your**”), and collectively the Parties.
- 1.2 We are a placement agency which interviews you and attempts to introduce you, and other au pairs, to host families (**Clients**) in Australia to work as an au pair for fees charged to the Client to find an appropriate au pair (**Services**).
- 1.3 An au pair provides live-in care of the children in a family home, including childcare and light housekeeping and cooking duties relating to the care of those children as expressly agreed with the Clients and set out in a job description in relation to a particular placement.
- 1.4 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. Registering with us 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 warrant that you are 18 years or older. You must not seek services from us if you are under 18 years of age. If you do not agree to these Terms, you should not register or seek services with us.
- 1.5 You accept our Terms by forwarding your profile to us.

**2. SERVICES**

- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We will begin performing the Services from the date that you accept these Terms.
- 2.3 You acknowledge and agree that, to enable us to perform the Services and find suitable positions for you, you will provide us with any information and documents reasonably required by us, including, but without limitation, your driver’s licence, proof of a police check and a working with children check where available (or equivalent in your home country), information and documents relating to your background, professional experience and reference checks (**Relevant Information**).
- 2.4 We may request to see original copies or certified copies of the Relevant Information.
- 2.5 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.6 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the

services provided by Third Parties. You must make direct arrangements with them.

**3. YOUR INFORMATION**

- 3.1 In accordance with Australian Privacy Legislation, and our Privacy Policy, we will only use your personal and sensitive information to verify your Relevant Information and secure placements on your behalf.
- 3.2 You authorise us to collect and use personal information about you, including Relevant Information in the interest of vetting you and securing you suitable work as an au pair. Prior to the distribution of information to Clients that would identify you personally, we will seek your consent.
- 3.3 All information provided by you must be supplied honestly and in good faith.
- 3.4 We will introduce you to Clients on the basis of and relying upon, the accuracy and completeness of Relevant Information supplied to us by you.
- 3.5 You agree to provide us with all Relevant Information required from time to time and any updates to that Relevant Information.

**4. YOUR OBLIGATIONS AND WARRANTIES**

- 4.1 You agree that in consideration of the opportunity for placements under these Terms, until these Terms are terminated and after these Terms are terminated, you will not interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between us and any of our Clients or between our Clients and other au pairs we have introduced to them.
- 4.2 You will notify us immediately if you are offered work by a Client to whom you were directly or indirectly introduced by us.
- 4.3 You may not, and you agree that you will not, use our Services and then complete, or assist another individual/s to complete, an arrangement with any of our Clients independent of our Services in order to circumvent the obligation to pay fees related to our provision of the Services or to remove us as a party to any subsequent arrangements or agreements between you and/or another individual/s and our Clients.
- 4.4 You agree that, in addition to your other obligations, you will not engage in any arrangement which induces or may induce a Client to breach its agreement with us in that regard.
- 4.5 You agree and warrant that throughout the term of these Terms that:
  - (a) you wish to be registered as an au pair with us;
  - (b) there are no legal restrictions preventing you from agreeing these Terms;

- (c) you agree to apply for the appropriate working with children check in the State/Territory where the Client resides, on commencement of placement;
  - (d) you consent to us undertaking 2 reference checks with your previous employers and personal referees, as requested by us;
  - (e) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services including attendance at interviews with us and Clients;
  - (f) the Relevant Information, and any other information you provide, is true, correct and complete and is not misleading in any way;
  - (g) you are responsible for compliance with all other statutory requirements;
  - (h) you will take out your own personal and medical travel insurance for the entire duration of the placement and agree to provide proof of the insurance to us or the Client if requested;
  - (i) you have provided and will provide any details of any health concerns that may interfere with your ability to carry out your placement;
  - (j) you are responsible for all immigration and visa matters that are associated with working in Australia as an au pair;
  - (k) you will obtain and comply with all of the requirements of either a Working holiday subclass (417) or (462) visa, required to work in Australia;
  - (l) you can and will cover your own costs in relation to travel to work for a Client, including flights and visa costs, unless otherwise agreed between yourself and the Client, and return to your home country;
  - (m) you will purchase and will have available an Australian mobile telephone on your arrival in Australia;
  - (n) you will inform us immediately of any changes to the Relevant Information;
  - (o) you will observe and adhere to the agreement entered into between you and the Client;
  - (p) you agree that any references or details of referees you provide to us may be shared by us with Clients;
  - (q) you will not infringe any third party rights in working with us and receiving the Services;
  - (r) you will inform us if you have reasonable concerns relating to our provision of Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns; and
  - (s) 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.
- 5. CONFIDENTIAL INFORMATION**
- 5.1 You agree not to disclose our Confidential Information, or any Confidential Information relating to our Client, to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 5.2 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
  - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
  - (c) is received from a third party, except where there has been a breach of confidence; or
  - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 5.3 The obligations under this clause will survive termination of these Terms.
- 6. PLACEMENTS WITH CLIENTS**
- 6.1 We have no control over, nor responsibility for, the behaviour, actions or omissions of our Clients.
- 6.2 We may not be successful in finding you work and will have no liability to you in the event that we are unable to do so.
- 6.3 If a placement is arranged, we will provide you with details of the Client for the placement. You will be under no obligation to accept any placement offered unless and until you agree with our Client to do so.
- 6.4 You will receive a letter from the Client confirming the arrangements. The start and end date of your placement will be determined between yourself and the Client.
- 6.5 If you accept a placement with a Client, your rights and obligations (apart from those set out in these Terms) will be governed by the agreement between you and the Client.
- 6.6 If you are engaged by the Client, all pocket money to which you are entitled will be paid directly to you by the Client in accordance with the terms of your agreement with the Client.

- 6.7 You agree that you will not make any claim against us in respect of any harm, damage or loss suffered by you resulting directly or indirectly from any default, breach, negligence or unlawful acts or omissions by a Client or any member of a Client's family.
- 7. FEEDBACK AND DISPUTE RESOLUTION**
- 7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff.
- 7.2 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 Victoria 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.
- 7.3 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.
- 8. TERMINATION**
- 8.1 These Terms shall continue in effect throughout the period of any placements we arrange for you and otherwise until termination of these Terms in accordance with this clause.
- 8.2 Either party may terminate these Terms with 7 days' notice to the other party. Notice of termination may be provided via email, our email address is available on the Website and we will use the email address you provided at registration.
- 8.3 In case of material breach, either party may terminate the Terms, subject to following the dispute resolution procedure.
- 8.4 We may terminate the Terms immediately, in our sole discretion, if:
- (a) we consider that you have damaged our reputation in any way, whether due to your suspension or termination of your role by a Client or otherwise;
- (b) we consider that our working relationship has broken down including a loss of confidence and trust; or
- (c) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe.
- 8.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and/or documents containing or relating to our Confidential Information.
- 8.6 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.
- 8.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 9. LIMITATION OF LIABILITY AND CONSUMER LAW, DISCLAIMERS**
- 9.1 **ACL:** Certain legislation including the Australian Consumer Law (ACL) in the *Consumer and Competition Act 2010 (Cth)*, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 9.2 Our liability is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 9.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 9.4 **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 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.
- 9.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.
- 9.6 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 9.7 **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 the inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 9.8 **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 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.
- 9.9 We do not guarantee that you and/or your services will be requested or required by any of our Clients and that you will be able to find suitable work or job offers from our Services.
- 9.10 We will not be responsible nor liable for any harm, damage or loss suffered by you, directly or indirectly caused by the use of our Services or during your placement with Clients.
- 9.11 This clause will survive termination of these Terms.
- 10. INDEMNITY**
- 10.1 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, including all Relevant Information, that is not accurate, up to date or complete or is misleading or a misrepresentation;
  - (b) any breach of these Terms by you, including but not limited to breach of any warranties;
  - (c) termination of these Terms by you;
  - (d) any placement we arrange for you with a Client; and
  - (e) any misuse of the Services by you.
- 10.2 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 our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 10.3 The obligations under this clause will survive termination of these Terms.
- 11. GENERAL**
- 11.1 **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.
- 11.2 **GST:** If and when applicable, GST payable on our 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.
- 11.3 **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).
- 11.4 **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.

- 11.5 **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 these Terms by giving you 5 days' notice in writing.
- 11.6 **Notice:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing. Any notice must be sent by email to the address provided or as amended by notice given in accordance with this clause, and notice will be deemed to have been served at the time of transmission in the case of transmission.
- 11.7 **Jurisdiction & Governing Law:** These Terms are governed by the laws of Victoria and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.
- 11.8 **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.

## 12. DEFINITIONS

- 12.1 **Confidential Information** includes confidential information about our business including structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, Client, customer and supplier lists (including prospective Client, customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 12.2 **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.

- 12.3 **Website** means the website, available at [www.nicheaupairs.com.au](http://www.nicheaupairs.com.au).

### Contact details:

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