



**Terms of Business**  
**For the Supply of Permanent and Fixed Term Placements**

**1. Scope of this Agreement**

- i. This Agreement shall apply to: a) any Business proposed or undertaken by Fernway Partners (Hereafter referred to as FP) for the Client; and b) the employment, engagement or other use by the Client of a Candidate Introduced by FP.
- ii. In the absence of written confirmation, the use by the Client of any curriculum vitae provided by FP (or the details therein) or the employment or engagement of any Candidate Introduced by FP will constitute acceptance by the Client of these Terms and Conditions.

**2. The Placement**

- i. FP shall use reasonable skill and care in the sourcing and Introduction of Candidates to the Client.
- ii. The Client shall provide all information reasonably necessary to enable FP to assess the suitability of a Candidate for a Placement.
- iii. FP will take reasonable care to ensure the suitability of any applicant when selecting Candidates, by screening, skills testing, checking references and conducting performance checks. However, the Client shall satisfy itself that the Candidate is sufficiently qualified and skilled for the position and meets medical and other requirements. Any hiring decision made must be based upon the enquiries and judgment of the Client.
- iv. FP gives no representation or warranty that any Candidate is or will be willing and/or available to accept any Placement.
- v. FP will not be liable for losses, liabilities, costs and expenses incurred by the Client arising from the Candidates acts or omissions including their acts or omissions in the performance of their employment with the Client.
- vi. The Client acknowledges that the final decision to employ or engage the Candidate rests with it.

**3. Retained Searches**

- i. Where a retained search is agreed upon, a fee is payable by the Client and will be invoiced in three stages:
  - 33% on signed agreement to undertake the search,
  - 33% upon presentation of short-list by FP
  - Remaining balance (if applicable, adjusted for any changes to the Salary Package) on the signing of an employment contract by the Candidate.
- ii. If the Client withdraws the Placement before the Candidate commences, the first two stages of fees specified in clause 3.i will be payable immediately.

#### 4. Fees

- i. The fees payable by the Client for a placement are calculated as a percentage of the Salary Package, as per the table below:

TRP (Total Remuneration Package)	Retained	Exclusive	Contingent
\$0 - \$99,999		15%	18%
\$100,000 - \$149,999		20%	22%
\$150,000 - \$199,999	20%	22%	26%
\$200,000 +	25%	25%	

#### 5. Payment & Additional Costs

- i. The Client agrees to pay all invoices within 14 days of the date of invoice.
- ii. The Client is deemed to have accepted the invoice if no dispute is raised within 14 days of the date of invoice. Overdue payments are subject to interest on the amount unpaid from the due date to the date of payment at a daily rate 2% per annum above the base rate of Reserve Bank of Australia.
- iii. Additional costs will only be incurred with the Client's approval and charged at rates agreed. These will be payable by the Client, even if the Candidate is not placed.
- iv. A dispute will not affect payment of non-disputed fees or the payment of any other invoices due by the Client and the Client shall have no right of set off.
- v. All fees are GST exclusive. GST shall be charged on fees due at the prevailing rate.
- vi. Any costs incurred by FP in recovering amounts overdue shall be payable by the Client.

#### 6. Fixed Term Placement, Extensions and Conversions

- i. Any Candidate that FP introduces to the Client who becomes employed or engaged directly by the Client on a fixed term contract, Pro-rata fees in accordance with the fee structure stated in clause 4i shall apply.
- ii. If a Fixed Term Contract is extended or if the Candidate accepts permanent employment with the Client, a further fee will be payable in accordance with clause 4i. In each case, the Client must notify FP immediately.
- iii. Minimum initial fixed Term contract period is 6 months.
- iv. No further introductory fee shall be applicable beyond the initial 12 month period

#### 7. Introductions

- i. The Client shall inform FP and shall pay the fee that would have been due to FP for a Placement where (a) an Introduced Candidate is employed or engaged by the Client within 12 calendar months from the Introduction or (b) irrespective of whether or not a Placement resulted from the Introduction of a Candidate by FP to the Client, the Candidate is Introduced by the Client to a third party within 12 calendar months of the date of Introduction.
- ii. The Client must notify FP immediately if a Candidate accepts employment with the Client or a third party to whom the Client has referred the Candidate

## 8. Replacement Guarantee

- i. Should the engagement of a Candidate terminate within a period of 8 weeks from the employment start date, FP shall use its best endeavours to find a replacement Candidate at no additional charge to the Client, on the condition that: (a) the Candidate leaves of his/her own volition and not due to any change in work conditions, job description or redundancy (b) FP's invoice has been settled in accordance with this Agreement; (c) the Client has complied with its obligations to the Candidate including its obligations under any relevant law; (d) FP has exclusive opportunity to replace the Candidate for a period of 1 calendar month from notification; (e) the role to be replaced is the same as the initial Placement
- ii. If the Salary Package of the replacement Candidate changes from the original Candidate, the invoiced amount will be adjusted accordingly.
- iii. The replacement guarantee will be valid for a period of 3 months from the date of termination of the initial Candidate, after which FP is not obliged to offer such guarantee.
- iv. Should FP be unable to source a suitable replacement candidate, the client will receive a credit based on the following sliding scale:
  - 0 – 30 days: 100% of invoice value
  - 30 – 60 days: 50% of invoice value
- v. Any credit is valid for a period of 12 months from the issue date

## 9. Confidentiality

The Parties will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing Party, (including this Agreement and details of any Candidate), in confidence and will not disclose such information without the consent of the other Party unless required by law or it has already been made available to the public other than through a breach of this clause.

## 10. General

- i. Neither Party shall be liable to the other under or in connection with this Agreement for any indirect or consequential loss, loss of profits or loss of revenue. Nothing in this Agreement limits any warranty or right imposed by statute or regulation to the extent that it cannot lawfully be limited, or limits either party's liability for its fraud (including fraudulent misrepresentation).
- ii. The Client will not during the course of this Agreement and for a period of 12 calendar months thereafter directly or indirectly induce, entice or solicit away or try to induce, entice or solicit away from FP any individual who is an employee, director or consultant of FP.
- iii. If the Client employs or engages any person in breach of clause 10.ii, the Client shall pay a sum pursuant to FP's terms of business clause 4
- iv. If a clause is held by a Court to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other terms of this Agreement.
- v. If a Party is prevented in the performance of this Agreement by circumstances that are beyond the control of a Party then that Party will not be liable for what would otherwise have been a breach of its obligations under this Agreement.
- vi. No failure or delay by either Party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of any clause will be effective unless confirmed in writing to the other Party and in the case of FP, by a director of FP.

vii. Those clauses which, by their nature, are intended to continue to have effect following termination of this Agreement shall survive and continue to bind the Parties.

## 11. Definitions

The following words are defined as follows:

- (i) "Business" means work performed by FP in relation to permanent or Fixed Term Placements including, but not limited to, FP receiving instructions from the Client for a Placement, short listing of Candidates, Introducing a Candidate, FP's arrangement of or conducting interviews with Candidates or any other act in the sourcing or supply of a Candidate.
- (ii) "Candidate" means an individual Introduced by FP to the Client.
- (iii) "Client" means you or any Related Bodies Corporate (as defined in section 50 of the Corporations Act 2001).
- (iv) "Conversion" means the transition from a fixed term placement or a contractor to becoming a permanent employee of the Client.
- (v) "Extension" means the increase in duration of any fixed term placement or contract.
- (vi) "FP" means Fernway Partners.
- (vii) "GST" means GST (Goods and Services Tax) Act 1999.
- (viii) "Introduced" means (a) the sending of a Candidate's CV or other information which expressly or implicitly identifies the Candidate or (b) the arrangement of an interview whether at a face to face meeting, by telephone or by video conference with a Candidate or (c) the introduction by whatever means by FP to the Client or the Client to a third party that enables the Candidate to be identified.
- (ix) "Parties" means FP and the Client and "Party" shall be construed accordingly.
- (x) "Placement" means a position or role to which a Candidate may be or is appointed on a permanent or fixed term basis with the Client and includes a Fixed Term Placement;
- (xi) "Salary Package" means the annual anticipated gross remuneration package for a Placement, which includes gross annual salary, superannuation, applicable benefits, guaranteed commission and bonuses, allowances and joining inducements. The provision of a car is valued at \$20,000 per annum.