

Terms of Business



TERMS OF BUSINESS AUSTRALIA & NEW ZEALAND

These Terms of Business apply to **Fin Talent Australia Pty Ltd** and any prospective employer who hires or otherwise engages a Candidate, Contractor or Temporary Employee, as applicable, introduced by FinTalent to the Client (together, the "Parties").

1. Definitions

In these Terms of Business, the following definitions will apply:

"Candidate" means any person Introduced to the Client by The Agency for the purpose of them being considered for employment or other engagement by the Client.

"Client" means any person or corporation (or any "related" or "associated" person or corporation of them, within the meaning of those terms in the Corporations Act 2001 (Cth)) that authorises The Agency to provide Candidate to it (or its representative) or interviews a Candidate.

"The Agency" "The Agency" means Fin Talent Australia Pty Ltd including any permitted successors or assigns.

"Contractor" means any individual or entity introduced by The Agency operating under their own NZBN (New Zealand Business Number), ABN (Australian Business Number) or Pty Ltd company, who is directly engaged by the Client for services on a non-employee basis.

"Fee Schedule" means the schedule of fees attached to these Terms of Business, or the fees as notified by The Agency.

"Retained Recruitment" means a recruitment engagement where the Client

commits to The Agency exclusively for a specific assignment and agrees to pay a portion of the Placement Fee upfront, with the remainder due upon successful placement.

"GST" means the goods and services tax, as outlined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) in Australia or the Goods and Services Tax Act 1985 in New Zealand, as applicable.

"Introduction", in relation to a Candidate, refers to The Agency supplying any information about a Candidate to the Client, either orally or in writing, such as the Candidate's name, academic background, employment history, or other relevant details. The term "Introduced" has a corresponding meaning.

"Parties" means The Agency and the Client, as well as their respective successors and permitted assignees. The term "Party" shall be construed accordingly.

"Placement" means where the Client directly or indirectly engages a Candidate to perform a job or a position required to be filled.

"Placement Fee" means the fee that is payable by the Client to The Agency if the Client employs a Candidate or otherwise, charged in accordance with the Fee Schedule, or as notified by The Agency.

"Related Body Corporate" has the same meaning as in the Corporations Act 2001.

"Privacy Laws" means, as applicable, the Privacy Act 1988 (Cth) (Australia), the Privacy Act 2020 (New Zealand), and any amendments and regulations made pursuant to them.



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"Replacement Period" means the Replacement Period set out in these Terms of Business.

"Salary Package" means the anticipated gross remuneration package payable to the Candidate in the first year of their employment which includes gross annual salary (including superannuation).

"Schedule" means the schedule attached to this Agreement, which may be substituted from time to time.

"Us", "our", "ourselves", "we" or "Company" refers to The Agency.

"You" or "your" refers to the Client and, where the context indicates, a Related Body Corporate or an entity related to the client.

2. General

2.1 Fin Talent Australia Pty Ltd provides recruitment services for permanent, temporary, casual and contract employment requirements ("Recruitment Services") to you (including any affiliated or related company) (the Client) on the terms and conditions set out in these Terms of Business.

3. Acceptance of Terms of Business

3.1 Acceptance of these Terms of Business by the Client occurs, at the time when the Client is presented with the Terms of Business in writing, whether by delivery, post, email or facsimile, in one of the following circumstances:

- a) In the Introduction of a Candidate (if not previously accepted).
- b) In response to a request by the Client for The Agency to provide Recruitment Services whether that request was given orally or in writing; or
- c) Accompanying a report by The Agency including the resume and/or details of a potential applicant for a position with the

Client (Candidate Details) presented to the Client by The Agency.

- 3.2** Acceptance by Conduct Contract Law; Once these Terms of Business are presented, any further conduct by the Client constitutes **financial engagement of The Agency on a retained basis**, with an upfront fee payable as outlined in Clause 6.7. The Client acknowledges that this is not a contingent arrangement and agrees to proceed exclusively and in good faith with the recruitment process. Such conduct includes, but is not limited to, providing vacancy details, requesting candidate sourcing, giving feedback on Candidates, scheduling interviews, or making enquiries related to The Agency's services or Candidate profiles.
- 3.3** For the avoidance of doubt, execution of this document by the Client is not required to constitute acceptance of these Terms of Business.
- 3.4** This Agreement will govern the basis upon which The Agency provides the Client with Recruitment Services.

4. Obligations of The Agency

- 4.1** Unless otherwise agreed between The Agency and the Client, The Agency will provide the Client with Recruitment Services in accordance with the terms and conditions set out herein.
- 4.2** The Agency takes reasonable steps to supply Candidates to the Client in accordance with the with full and accurate information about the Clients job requirements, and ensures that each Candidate demonstrates a reasonable level of skill, integrity, and reliability in carrying out their assigned responsibilities.
- 4.3** The Agency are not responsible for organising licences or permits necessary for a Candidate to perform work for the Client.
- 4.4** The Agency will maintain adequate insurance as required under any applicable law, at such coverage limits in accordance with good professional practice and against insurable risks which may be incurred from the recruitment services provided.



5. Fees

5.1 The Client will be liable to pay The Agency the Placement Fee in two instalments as outlined in Clause 6.7 — one-third (1/3) upfront upon engagement, and the remaining two-thirds (2/3) upon successful placement. The Initial Engagement Fee is non-refundable under any circumstances and is due within Seven (7) days of the date of the relevant tax invoice. (Due Date).

5.2 The Client's obligation to pay the Placement Fee to The Agency is absolute under these Terms of Business and cannot be used as a legal or equitable set off for any claim the Client may have or allege against The Agency for any other Candidate.

6. Fees - Permanent Employment Services

6.1 The Client must notify The Agency in writing if it has employed a Candidate, as soon as practicable after the occurrence of the event.

6.2 The Client will be liable to pay The Agency a Placement Fee for a Candidate, in accordance with these Terms of Business, in any of the following circumstances:

- a) If in any way the employment of the Candidate is as a consequence of or is otherwise attributable to the Introduction of the Candidate by The Agency;
- b) The Client employs the Candidate within 12 calendar months of the date of Introduction;
- c) The Candidate is employed by the Client (irrespective of the position in which they are employed) within a period of 12 months after he/she/they was last Introduced to the Client by The Agency; or
- d) If the Client employs an employee, Contractor or Temporary Employee of The Agency who is performing an assignment for the Client or who has performed an assignment for the Client within the past 12 months.

6.3 The Placement Fee is calculated as a percentage of the Total Salary Package of the Candidate which includes salary and superannuation as per the Fee Schedule.

6.4 As the recruitment services being provided by The Agency are identical irrespective of the

type of role, The Agency will charge the full-time equivalent Placement Fee for a Part-Time Placement (with no pro-rating), e.g. If The Agency recruits a 0.5 FTE and the full-time equivalent salary is \$80,000 per annum, then the Part-Time Placement Fee will be The Agency's margin% x \$80,000.

6.5 The Schedule of Fees may only be varied as agreed in writing between The Agency and the Client for Special Arrangements, Reduced Fees or otherwise.

6.6 The Placement Fee is specified in the Confirmation of Fees in the Schedule.

6.7 Retained Assignment and Executive Search

For retained recruitment assignments, the total Placement Fee is payable in two instalments:

a) **Initial Engagement Fee:** One-third (1/3) of the estimated Placement Fee is invoiced upon acceptance of the retained assignment. This payment is non-refundable and confirms the Client's commitment to proceed.

b) **Placement Completion Fee:** The remaining two-thirds (2/3) of the Placement Fee will be invoiced upon successful placement of a Candidate. This invoice will reflect the final agreed Total Salary Package. Both invoices are payable within 7 days of the invoice date.

6.8 For Retained Exclusive Recruitment the Client is required to consider only Candidates during the Retained Period of (6 weeks) and is not permitted to consider other persons for a position either directly or through any other recruitment agencies during this time. As such, anyone considered for the Position within the Retained Period are deemed to be Candidates of The Agency.

6.9 Role Cancellation – Retained Assignments

If the Client cancels or materially alters the retained assignment after the Initial Engagement Fee has been paid, the fee remains non-refundable. The Agency reserves



the right to invoice an additional amount (up to \$3,000.00 plus GST) to reflect the sourcing work and opportunity cost incurred after 10 business days.

7. Fees - Fixed Term Employment Services

7.1 A Placement Fee for fixed term placements will be charged on a pro rata basis (on the basis that the full Placement Fee is payable for a period of 12 months or more). If the Candidate is subsequently offered (and accepts) a permanent position, the Client will be charged the balance of the full Placement Fee amount in accordance with these Terms of Business.

7.2 If the fixed term placement is extended, but not fully converted to a permanent position, the Client will be invoiced a further pro rata amount based on the additional period the Client intends the Candidate to continue. This arrangement will be repeated until the amount of the Placement Fee for a permanent placement has been invoiced and paid. For fixed term placements of less than 6 months there will be a minimum pro rata charge of 50%.

8. Fees – Contractor Engagement Terms

8.1 The Agency introduces Contractors (operating under a NZBN, ABN or Pty Ltd/Limited structure depending on jurisdiction) to the Client for direct engagement. These Contractors are not employees or subcontractors of The Agency.

8.2 The Client agrees that all engagements are made directly between the Client and the Contractor, and the Contractor assumes all responsibility for their own tax, superannuation, insurances, and statutory obligations.

8.3 Upon engagement of a Contractor, a **Contractor Introduction Fee** (as outlined in the Fee Schedule) is payable to The Agency within 7 days of invoice.

8.4 The Agency is not responsible for managing timesheets, payments, or any other administrative duties related to the

engagement, unless agreed otherwise in writing.

8.5 The Agency does not warrant or guarantee Contractor performance. The Client agrees to conduct their own due diligence prior to engagement and holds full responsibility for the ongoing working relationship.

9. Further Engagement of Contractors or Temporary Employees

9.1 If the Client engages a Contractor (introduced by The Agency) directly within **12 months** of the Introduction — whether initially or after a project concludes — the Client must pay the applicable **Contractor Introduction Fee**.

9.2 The Client agrees to notify The Agency immediately if it engages a Contractor in the circumstances outlined in this clause, and to pay the relevant Placement Fee to The Agency. This applies regardless of whether the Contractor is engaged:

- directly by the Client,
- via another supplier,
- under a different ABN/Pty Ltd,
- or into a different role/function.

9.3 The Client must notify The Agency within 5 business days of any such engagement and agrees to full fee liability as per the Fee Schedule.

10. Placement Guarantee

10.1 Subject to clause 10.2, if a Candidate Introduced by The Agency is employed by the Client and their employment is terminated within the timeframe specified in the Schedule from the commencement of their employment, The Agency will use reasonable endeavours to present replacement candidates to the Client for the same position in the same location (Replacement Candidate) without further fees becoming payable (Guarantee Period).

10.2 The Agency will be obliged to present Replacement Candidates only if during the Guarantee Period:

- a) The full Placement Fee (including both instalments) has been paid by the Client on or before the due dates.



- b) The termination of the Candidate does not arise by reason of the Candidates position having been made redundant, restructured or otherwise having ceased to exist or substantiated grievance against the Client.
 - c) The Candidate was not transferred to either an affiliated or third-party company of the Client.
 - d) The Agency has been informed by the Client of their intention to call upon the Placement Guarantee, in writing within three days of the Candidates termination with the Client; and
 - e) All other terms and conditions set out in this agreement having been complied with.
- 10.3** The Agency obligation where clauses 10.1 and 10.2 apply will be to take reasonable steps to provide the Client with a once only Replacement Candidate for the original Candidate position.
- 10.4** No Placement Guarantee is provided for a Candidate who has been placed on a fixed term placement or where the Candidate was previously engaged as a Contractor or Temporary Employee.
- 10.5** If a Candidate's employment is terminated. The Agency is given the exclusive recruitment opportunity to find a replacement Candidate.
- 10.6** The Guarantee Period applies once only and once a Replacement Candidate has been employed by the Client, there is no further Guarantee Period offered for the Replacement Candidate.
- 10.7** The Guarantee Period is used as a replacement for the original position in the original location. It is not to be used as a credit for other positions or locations.
- 10.8** Where the replacement Candidate's Remuneration Package is less than that of the position originally recruited for, the Client remains liable to pay the Fee payable for the original position. Where the replacement Candidate's Remuneration Package is more than that of the position originally recruited for, the Client will be liable to pay the difference between the Fee payable for the replacement Candidate and the Fee previously paid for the position originally recruited for; The Agency reserve the right to negotiate the replacement terms should changes occur in the role or job description originally recruited for.
- 11. Confidentiality and Privacy**
- 11.1** The presentation of any Candidate information by The Agency to a Client is confidential, and solely for the supply, acquisition and use of our Employment Services. You agree not to use or disclose it for any other purpose without our consent, even if it is otherwise in the public domain.
- 11.2** Each Party agree 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.
- 11.3** The Client must always respect and protect the privacy of Candidates. If the Client becomes aware of any breach of Privacy Laws (whether under Australian or New Zealand legislation) related to information disclosed by The Agency, the Client must immediately inform The Agency and follow any reasonable instructions provided by The Agency regarding the breach.
- 12. Limitation of Liability**
- 12.1** The Client agrees that The Agency will not be liable to the Client for any act, omissions, delays, loss, or errors, (direct or indirect and including loss of profit) damage or expense suffered or incurred, however caused by the Client, or any other person or entity in connection with the Introduction and/or subsequent employment of a Candidate by the Client.
- 12.2** The Client releases The Agency from all and any claims, actions, losses or liabilities that it may suffer in connection with the Introduction and /or subsequent employment of a Candidate by the Client, including any negligence, fraudulent behaviour, dishonesty misconduct, or lack of skill of any Candidate that The Agency Introduced to the Client.
- 12.3** Neither Party will be liable to the other for any indirect or consequential losses, loss of profit, revenue, production, reputation or any special, punitive or exemplary damages.



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12.4 The Client agrees to indemnify The Agency for any losses incurred as a result of the Client's breach of these Terms and Conditions.

12.5 The Agency's liability under these Terms of Business (including negligence) or otherwise shall be limited to the fees which are paid at the time that the liability arises. This clause survives termination of any agreement between the Parties.

13. Damages

13.1 If the Client fails to pay any invoice issued by The Agency on the Due Date (or as otherwise agreed between The Agency and the Client in accordance with these Terms of Business, The Agency is entitled to recover the Placement Fee and any other fees outstanding as a liquidated sum.

13.2 If any outstanding fees (including Placement Fees) owed to The Agency have been passed on to a third party for collection, the Client will be responsible for recovery of these fees and liable for any costs associated with the recovery of the outstanding fees (including Placement Fees) and these costs may include but are not limited to debt collection commissions and solicitors fees. Notwithstanding, the provisions in this clause, if The Agency agrees to offer the Client a Reduced Fee, and the Reduced Fee Invoice issued by The Agency remains unpaid by the Reduced Fee Invoice Due Date, The Agency reserves the right to re-invoice the Client at the full Placement Fee rate and recover the Placement Fee and any other fees outstanding as a liquidated sum.

14. Non-Solicitation

14.1 Should the Client or any subsidiary, or associated company or related body corporate of the Client (whether on the Client behalf or any person or entity) subsequently engage or re-engage the Candidate(s), or use the Candidate(s), within the period of 12 calendar months from the date of Introduction then a full fee in accordance with the Payment Fees in this Terms of Business becomes payable (with no entitlement to a refund).

14.2 The Client acknowledges that by engaging the services of The Agency and/or through the

Introduction of Candidates by The Agency in any form or by any means, the Client confirms that they have considered all candidates from their internal database, advertising, or social media networks for the role. Therefore, any Candidate referred by The Agency who is subsequently hired will incur an introduction fee, even if the Candidate was later found in the Client's internal database or networks. The presence of a Candidate in the Client's internal database or networks does not exempt the Client from paying The Agency's fee for any Candidate ethically referred by The Agency who is hired.

15. GST

15.1 All fees referred to in this Terms of Business are subject to GST. Any applicable GST will be payable at the same time as our fees and rates are payable.

16. Assignment

16.1 Neither party may assign, transfer, or subcontract any of its rights or obligations under these Terms of Business, in whole or in part, without obtaining prior written consent from the other party. The Client may freely assign receivables due to it.

17. Variations

17.1 Any variation to these Terms of Business must be agreed upon in writing by both Parties.

18. Economic Sanctions

Client warrants that the provision of services and payment hereunder shall not result in breach of any trade, economic or financial sanctions laws or regulations.

19. Governing Law

19.1 This Agreement is governed by the laws of the jurisdiction in which the Client primarily operates, being either:

- The laws of Australia, for Clients operating in Australia; or
- The laws of New Zealand for Clients operating in New Zealand.



20. Confidential Agreement

The terms of this Agreement and any subsequent amendments are confidential and may not be disclosed by The Client other than for the purpose of obtaining professional, legal or accounting advice, without the written approval of The Agency

Fee Schedule: Placement Fee

The Placement Fee payable to us by you for the successful introduction of a Candidate is set out in the table on page 9.

In calculating the gross annual remuneration, all allowances, salary sacrificed benefits, and employer contributions of superannuation paid on the Candidate's behalf, will be assessed as remuneration.

1: Retained

All recruitment services are provided under a retained engagement structure. The total Placement Fee is invoiced in two stages:

- One-third (1/3) invoiced upfront upon engagement (non-refundable).
- Two-thirds (2/3) invoiced upon successful placement, calculated based on the Candidate final Total Salary Package.



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RECRUITMENT DRIVE	
FEE OPTIONS	RECRUITMENT
RATE	15% (PAYG)
GUARANTEE PERIOD	120 Days
PAYMENT TERMS	<i>1/3: Invoiced upon signing of the Terms of Business</i> <i>2/3: Invoiced upon execution of the Candidate's signed employment contract.</i>
AGREED SALARY PACKAGE	Base salary + Super

CLIENT DETAILS

Company name : _____

Billing name : _____

ABN : _____

Address : _____

Email Address : _____

As an authorised representative of the Client, I accept these Terms of Business for and on behalf of the Client.

Signed : _____

Name : _____

Position : _____

Date : _____





FinTalent

