

Terms and Conditions for Introduction of a Candidate

(as referred to in FinXL CVs and email auto-signatures)

1. APPLICATION OF THESE TERMS

1.1 These terms and conditions (Terms) govern the arrangement between FinXL and any Client to which a Candidate is Introduced (except where FinXL and the Client have entered into a separate written agreement which clearly governs the same subject matter, is intended to apply to future transactions, and cannot be amended or superseded without the express agreement of each party).

1.2 The Client agrees to, and accepts, these Terms when it:(1) requests and/or utilises the services of FinXL after having been provided with/referred to a copy of these Terms (including by link in a CV or email signature);(2) has/facilitates contact with a Candidate (by the Client or an Associated Party) following an Introduction by FinXL;(3) uses or discloses to any person/entity the details of a Candidate or the fact of the Introduction; and/or(4) is involved in the Placement of a Candidate with the Client or an Associated Party.

1.3 Where the parties have provided to each other competing standard terms, these Terms will apply unless there is a clear written agreement to the contrary.

2. FEES PAYABLE

2.1 If FinXL (or one of its representatives) Introduces a Candidate to a Client, and that Candidate is then employed or engaged by the Client (or an Associated Party) or they use the Candidate's services within 12 months of the Introduction, the Client must pay FinXL the following Fees:

(1) For any Permanent Placement, the "Permanent Placement Fee" is calculated as follows:(a) where the annual Total Remuneration is \$79,999 or below, it is 16% of the annual Total Remuneration;(b) where the annual Total Remuneration is between \$80,000 and \$119,999, it is 18% of the annual Total Remuneration;(c) where the annual Total Remuneration is between \$120,000 and \$169,999, it is 20% of the annual Total Remuneration; and(d) where the annual Total Remuneration is \$170,000 or over, it is 25% of the annual Total Remuneration.

For the avoidance of doubt, there will be no reduction in the Permanent Placement Fee if the Candidate is offered temporary/fixed-term employment by/for the Client/Associated Party.

(2) For any Contract Placement, the parties will enter into a Service Agreement (on FinXL's standard terms) detailing the hourly/daily contract rate to be paid by the Client and the responsibilities of the parties in relation to the Candidate/services. If the contract rate is not agreed in writing by the parties, the contract rate for the Contract Placement will be 25% of the Total Remuneration plus statutory on-costs for all periods during which the Candidate is providing contracting services to the Client on behalf of FinXL.

2.2 The Client must notify FinXL within 24 hours of a Placement being made. The Client must provide any information requested by FinXL to allow it to calculate the Fee payable by the Client.

2.3 The Client will be charged additional Fees (which will include the cost to the Company plus a service fee to be agreed) for the provision of the following additional services:(1) criminal, background, and other checking on a preferred Candidate; and(2) design and placement of recruitment advertising.

3. PAYMENT TERMS

3.1 Fees quoted are exclusive of GST. GST will be charged on Fees at the current rate. Australian Placement fees quoted/payable in AUD; NZ Placement fees in NZD.

3.2 Subject to clause 3.3, for Permanent Placements - the Client will be billed for the full Fees shortly after the Placement start date, and the Fees are payable within 14 days of the invoice date.

3.3 If the parties have agreed in writing that FinXL is engaged on a retained assignment, the Permanent Placement Fee is payable in three equal instalments as follows:(1) upon receipt of instructions from the Client to fill a particular role;(2) upon the Client's acceptance of an approved shortlist of Candidates; and(3) upon the Candidate's acceptance of an offer of employment/engagement.

3.4 For Contract Placements - the Client will be billed fortnightly for the Fees, and the Contract Placement Fee is payable within 7 days of the invoice date.

3.5 Overdue payments are subject to interest on the amount unpaid from the due date to the payment date at a daily rate of 2.5% per annum above the CBA/RBNZ base rate.

3.6 Payment of Fees cannot be withheld by the Client while a dispute is resolved with FinXL or a Candidate. The Client has no right of setoff.

3.7 No Fees will be refunded to the Client in any circumstances.

4. REPLACEMENT GUARANTEE

4.1 Subject to clause 4.2 below, if a Placement ceases (at the initiative of FinXL, the Client, or the Candidate), FinXL will take all reasonable steps to provide a replacement for the Candidate if the Placement ceases:(1) for a Permanent Placement - within 12 weeks of the start date, with the replacement being free of charge on only one occasion and the replacement search lasting for up to 12 weeks; and(2) for a Contract Placement, at any time and on any number of occasions.

4.2 The replacement guarantee set out in clause 4.1 only applies if:(1) the Client has complied with these Terms, has paid the Fees on time, and has notified FinXL within 7 days of the cessation of the Placement;(2) the Candidate's Placement ceases for reasons that do not relate to any change in the Client's requirements or a redundancy situation;(3) the nature of the replacement role is the same as the initial Placement; and(4) the Client has not unlawfully discriminated against or otherwise acted unlawfully in relation to the Candidate.

5. CONFIDENTIALITY AND PRIVACY

5.1 The parties will hold securely information of the other that is confidential (either by its nature, by designation or as a result of its commercial value, but excluding information in the public domain other than by breach of this clause) and will not use or disclose that confidential information without the other party's consent, unless required by law.

5.2 All information relating to any Candidate Introduced by FinXL, and the fact of the Candidate's Introduction to the Client, is confidential and the Candidate's personal information must be handled in accordance with applicable Privacy legislation.

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6. LIMITATION OF LIABILITY

6.1 While FinXL will endeavour to Introduce the Client to suitable Candidates, FinXL accepts no liability for the quality/suitability of the Candidate, including the accuracy of their profile/CV or any representations regarding qualifications, skills, experience or work history (unless FinXL specifically agrees to check this and the Client has paid any associated fees).

6.2 The Client acknowledges that it is responsible for undertaking its own investigations into the Candidate (including conducting interviews) and for the final decision to employ/engage or use the Candidate's services.

6.3 FinXL gives no warranty that any Candidate Introduced is willing and/or available to accept any Placement.

6.4 FinXL will not be liable for losses, liabilities, cost and/or expenses incurred by the Client or a third party arising from the Candidate's acts or omissions in any Permanent Placement or the direct employment/engagement of the Candidate by the Client/Associated Party.

6.5 FinXL's overall liability under these Terms and/or relating to the Candidate:

(1) will be reduced to the extent that the liability is caused/contributed to by the Client or any third party; and

(2) will be limited to the cost of resupply of the services or, if resupply is not a suitable remedy in all the circumstances, the amount of the fees actually paid by the Client to FinXL for the Candidate/services in question.

6.6 The parties will not be liable to each other for any indirect or consequential loss, loss of profits or loss of revenue.

6.7 Nothing in these Terms limits either party's liability for fraud/fraudulent misrepresentation or limits any statutory warranty/right that cannot be lawfully limited.

7. DEFINITIONS

For the purposes of these Terms, the below words/phrases have the following meaning:

7.1 Associated Party means any person/entity with whom the Client has shared information relating to the Candidate, including any Related Body Corporate/Related Company of the Client.

7.2 Candidate means any individual who is Introduced to the Client for any role/vacancy/Placement with the Client and/or to meet a requirement of the Client and/or for consideration for employment/engagement/use by the Client.

7.3 Client means any person/entity to whom a Candidate is Introduced by FinXL to be considered for Placement.

7.4 Contract Placement means the Placement of a Candidate employed/engaged by FinXL to provide services to the Client on FinXL's behalf.

7.5 FinXL means FinXL Professional Services Pty Ltd (trading as FinXL IT Professional Services, XL Digital, and Southern Cross Computing) and any Related Body Corporate/Related Company, including FinXL Professional Services NZ Ltd (trading as FinXL IT Professional Services and XL Digital).

7.6 Introduce (or Introduced or Introduction) means the presentation of a Candidate to the Client by provision of the Candidate's: (a) name; and/or (b) LinkedIn or other profile; and/or (c) CV or part CV or resume; and/or (d) a description of their skills, qualifications, experience or work history.

7.7 Permanent Placement means the Placement of a Candidate for employment/engagement directly by the Client (or through a third party, other than FinXL, to provide services to the Client), including on a full-time, part-time, short-term or flexible basis.

7.8 Placement means the engagement of the services of the Candidate for the benefit of the Client/Associated Party, whether as an employee, consultant, contractor or agent (by direct arrangement between the Candidate and the Client or via FinXL or a third party).

7.9 Related Body Corporate/Related Company has the meaning attributed to that phrase in the Australian Corporations Act or the NZ Companies Act (as applicable).

7.10 Total Remuneration means the anticipated gross remuneration package for a Placement, including gross salary/fees, and the value of any applicable benefits to be provided to the Candidate (including superannuation/KiwiSaver, commission/bonus - including sign on, allowances, car, medical and life insurance, equity options etc).

8. GENERAL AND INTERPRETATION

8.1 Subject to clause 1.1, these Terms constitute the entire agreement between the parties on the subject matter and supersede all related communications/arrangements between the parties.

8.2 All variations to these Terms must be agreed by both parties and recorded in writing.

8.3 These Terms are subject to the laws, and the exclusive jurisdiction of the courts, of: (1) the State/Territory of the Placement if the Placement is in Australia; and (2) New Zealand if the Placement is in New Zealand.

8.4 The invalidity, illegality or unenforceability of any provision of these Terms shall not in any way affect or impair the validity, legality or enforceability of the remaining provisions.

8.5 Any use of the word "including" in this Agreement does not limit in any way the matters referred to thereafter and does not precede a complete list of relevant items.

8.6 The parties will comply with applicable labour hire licensing, modern slavery and human rights laws (including putting in place processes to investigate, assess, address and report on - where required - the risk of modern slavery in their operations and supply chain) and provide evidence of compliance if asked.