



## TERMS OF BUSINESS

- 1 **PARTIES:** These Terms and Conditions are between Byron Thomas Recruitment Pty Ltd (ABN 78 138 659 604) and / or any subsidiaries or related bodies corporate trading through separate trading names ("we / us / our"), and the Client Employer and their legal representatives, successors and/or assigns ("you / your"), and specify the terms upon which we will provide services to you until new Terms and Conditions are notified to you in writing.
- 2 **ACCEPTANCE OF TERMS AND CONDITIONS:** The acceptance of candidate details or interviewing of a candidate or engagement of a candidate introduced by us, or the passing to any other person or organisation of personal information pertaining to a candidate introduced to you by us, will amount to your acceptance of the Terms and Conditions. No variation can be made to these terms without the written consent of a Director of Byron Thomas Recruitment Pty Ltd. Specific terms are applicable according to the type of supply by Byron Thomas (either permanent/fixed term staff OR temporary staff) and are set out in two alternative columns below (clauses 3 – 8). The remaining terms (clauses 1-2 and 9-16) apply to both types of supply.

### SPECIFIC TERMS FOR INTRODUCTION OF PERMANENT/FIXED TERM STAFF

- 3 **ENGAGEMENT OF CANDIDATES:** You must notify us immediately where a candidate who we have introduced to your organisation accepts an engagement with you. Once you agree to engage a candidate introduced by us for any position within your organisation, even if the introduction is made indirectly, whether as an employee or in any other capacity, within twelve months of the initial introduction, you agree to pay us an amount calculated in accordance with the fee schedule below. A candidate introduced indirectly includes anyone introduced by another candidate who had themselves been introduced by us in the previous 12 months.
- 4 **ONWARD REFERRAL:** Introductions are confidential. Should an introduction result in the engagement of a candidate, either as an employee or any other capacity, to any other division or any related or associated company or firm, or any other employer you will be liable to pay us a fee calculated in accordance with the fee schedule below, as if the candidate had been engaged by you.
- 5 **SUITABILITY OF CANDIDATES:** Whilst we will make every reasonable effort to ensure the suitability of candidates, we do not accept liability for any loss, expense, damage or delay arising in connection with a candidate irrespective of how they are caused and for any indirect or consequential loss or damage resulting from a breach of contract, tort or otherwise howsoever arising. You will need to satisfy yourself as to their integrity, qualifications, suitability, and where relevant, medical condition for the position concerned has been met by the candidate. The final recruitment decision rests with you and you will indemnify and hold us harmless against all liability, loss, claims, fines, penalties and damage (including but not limited to our own losses and any third party claims and any legal costs on a full indemnity basis) arising out of or in connection with this Agreement or any act or omission of any candidate.
- 6:1 **SEE FEE FOR SERVICE:** The fee payable to us will be calculated as a percentage of the candidate's gross equivalent annualised remuneration package (plus G.S.T.) which will be taken to include base salary and all other benefits or allowances which represent remuneration in other forms, such as superannuation, subsidised housing loans, bonuses, commissions etc. Motor vehicles provided to staff will be valued at a minimum of \$15,000 per annum or as agreed in the package. Where a placement is part-time, the salary will be equated to the full-time equivalent and the fee shall be charged on that salary. The fee will be calculated as follows:

Salaries below \$39,999.....	12.0%
Salaries from \$40,000 to \$49,999.....	16.0%
Salaries from \$50,000 to \$99,999.....	18.0%
Salaries from \$100,000 to \$149,999.....	20.0%
Salaries from \$150,000 to \$199,999.....	25.0%
Salaries from \$200,000+.....	Agreed based on assignment

G.S.T. will be charged in addition to the fee.

- 6:2 These fees are to be paid at the time specified in any invoice we issue to you or if no invoice is issued or time is stated you will pay at the following times:
- i) Retained Assignments - where you have requested an exclusive service to seek candidates.
- 33% upon acceptance of the assignment (minimum of \$3,000 plus G.S.T.).
  - 33% upon presentation of a short list.
  - The balance remaining upon the successful completion of the assignment.
- ii) Contingent Assignments - where you are seeking candidates but not necessarily seeking an exclusive approach.
- These fees are to be paid on the commencement date of the candidate. A minimum fee of \$4,500 (plus G.S.T.) will apply to any permanent placement. We reserve the right to charge a fee if work is undertaken by us on an assignment that is subsequently withdrawn or cancelled after a short-list of candidates has been presented to you.
- 6:3 Time is of the essence in relation to payment and we may require earlier payment or cash upon delivery of the services if your credit worthiness becomes uncertain. All payments must be made in full without any set off or deduction whatsoever. If you fail to pay on time then without prejudice to any other remedy we may have to:
- i) Cancel this contract or suspend supply
- ii) Set off any other payments you have made against amounts due
- iii) Charge you interest calculated daily and compounded monthly at 2% above the base rate of ANZ Bank at the date of payment and the costs of recovery (including on a full indemnity basis and legal costs).
- 6:4 If any supply made by us is in our view a taxable supply for GST purposes or an adjustment event occurs that causes a supply to be a taxable supply, we will be entitled to charge an additional amount to you for GST or other similar tax and you acknowledge and accept our right to charge an additional amount for GST or other similar tax.
- 6:5 **ADDITIONAL COSTS:** You agree to reimburse Byron Thomas Recruitment Pty Ltd for the following out-of-pocket expenses within 7 days of receipt of invoice:

Expense Detail	Estimated Cost (plus G.S.T.)
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- 7:1 **REPLACEMENT GUARANTEE:** If a candidate you have recruited through us leaves your employment within 12 weeks of the date of commencement, we will endeavour to find a replacement free of charge. This replacement guarantee only applies when our fee has been paid within 14 days of the date of invoice, and we have been notified in writing within 7 days of the occurrence of a termination, providing the termination is for reasons other than retrenchment, change of job description or working conditions. This replacement guarantee is valid for a period up to 6 months from termination date and as the replacement guarantee relates to a specific job description, we reserve the right to negotiate our replacement terms should changes occur in the role originally recruited for. Where a replacement is recruited there will be no guarantee period applicable for such a placement. For the avoidance of doubt there is no replacement guarantee on a fixed term placement.
- 7:2 **RE-ENGAGEMENT:** Should you, or any subsidiary, or associated company, or related body corporate subsequently re-engage the candidate, or use the candidate, within the period of 12 calendar months from the date of termination a full fee in accordance with paragraph 3 above becomes payable (with no entitlement to a refund).
- 8 **ADVERTISING:** Where agreed and set out below, Byron Thomas Recruitment Pty Ltd will advertise the position(s) in the following newspapers and magazines and you agree to reimburse Byron Thomas Recruitment Pty Ltd for the costs detailed below within 7 days of receipt of invoice:

Newspaper / Magazine	Date	Estimated Cost (plus G.S.T.)
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- 9 **TERMINATION:** If full payment is overdue by more than 14 days or any proceedings related to insolvency is taken or you make any arrangement or composition with creditors then we may treat ourselves as being discharged from this agreement and without prejudice to any other remedy any fees will become immediately due and payable.
- 10 **FORCE MAJEURE:** We will not be responsible for any delays caused by or related to or arising out of any cause outside our reasonable control. Delays due to force majeure do not relieve you from the obligation to pay for services already provided.
- 11 **NO WARRANTY:** Dates quoted for supply are given in good faith and are approximate only. All warranties and representations whether express or implied by law, trade, custom or otherwise are to the extent permitted by law excluded.
- 12 **INTELLECTUAL PROPERTY:** You acknowledge that no intellectual property is conveyed or vests in you or any other person pursuant to this Agreement
- 13 **GOVERNING LAW:** This Agreement and the supply of the services will be governed and construed in accordance with the laws of the State or Territory in which this Agreement is entered into.
- 14 **WAIVER:** No express or implied waiver by us of any term of this Agreement will constitute a waiver unless in writing and signed.
- 15 **ENTIRE AGREEMENT:** This Agreement and any Byron Thomas invoice or Byron Thomas proforma that are attached constitute the entire agreement for the supply of services and supersede all prior representations or statements whether oral or written made by or on behalf of us. This agreement applies to the exclusion of any document submitted by you, which is inconsistent with this Agreement. If any provision of this Agreement is determined by a court to be invalid or void or voidable then the remaining provisions shall not be affected.
- 16 **NO ASSIGNMENT:** You may not subcontract, assign or otherwise transfer this Agreement in whole or in part.

### SPECIFIC TERMS FOR INTRODUCTION OF TEMPORARY STAFF

- 3:1 **PAYMENT OBLIGATIONS:** You agree to pay the hourly charge, (plus G.S.T.) advised by us at the time of the booking of the assignment. This hourly charge includes allowance for all statutory charges (including workers compensation, payroll tax and superannuation) paid by us. Travelling, hotel or any other expenses as may be agreed, will be charged in addition and itemised on the invoice (plus G.S.T.). A minimum charge of four hours per day will apply to each contractor / temporary booking. Any amounts payable to temporaries employed under the provisions and terms of the relevant state or federal award or certified agreement will be recharged to you.
- 3:2 You agree to verify and sign or where our partners Online Timesheet facility is in use, authorise via this medium, the Employment Business timesheets each week. Signature or online verification of the timesheets by you constitutes acceptance that the contractor / temporary has worked satisfactorily for the hours indicated on the timesheets. Failure to authorise the timesheets does not alter your liability to pay for hours worked.
- 3:3 All charges will be invoiced weekly and are payable upon receipt.
- 4:1 **SUBSEQUENT ENGAGEMENT OF A CONTRACTOR/OR TEMPORARY:** If within the duration of an assignment of a contractor / temporary introduced to you by us, or within 12 months of the conclusion of an assignment of a contractor / temporary introduced to you by us, you engage that person, either as an employee or any other capacity for a limited or unlimited period, a placement fee will apply. The placement fee will apply to any contractor / temporary introduced to you by us who is engaged by you or any division, related company or associated company on a permanent, contract / temporary, part-time or consultancy basis. Such a fee will also apply where our temporary employees/contractors are transitioned to another employment agency/business for whatever reason and in whatever manner.
- 4:2 The placement fee is to be paid at the time specified in any invoice we issue to you or if no invoice is issued or time is stated you will pay on the commencement date of the candidate and will be calculated as a percentage of the candidate's gross equivalent annualised remuneration package (plus G.S.T.) which will be taken to include base salary and all other benefits or allowances which represent remuneration in other forms, such as superannuation, subsidised housing loans, bonuses, commissions etc. Motor vehicles provided to staff will be valued at a minimum of \$15,000 per annum or as agreed in the package. Where a placement is part-time, the salary will be equated to the full-time equivalent and the fee shall be charged on that salary.
- 4:3 The fee will be calculated as follows:
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|---|----------------------------|
| Salaries below \$39,999.....              | 12.0%                      |
| Salaries from \$40,000 to \$49,999.....   | 16.0%                      |
| Salaries from \$50,000 to \$99,999.....   | 18.0%                      |
| Salaries from \$100,000 to \$149,999..... | 20.0%                      |
| Salaries from \$150,000 to \$199,999..... | 25.0%                      |
| Salaries from \$200,000+.....             | Agreed based on assignment |
- G.S.T. will be charged in addition to the fee.

- 4:4 Where the amount of annualised commencing remuneration is not readily ascertainable it will be calculated as a multiple of 1800 times the hourly charge (plus G.S.T.) at which the temporary / contractor was last supplied to you.
- 4:5 A minimum fee of \$4,500 (plus G.S.T.) will apply to any such placement.
- 4:6 No guarantee applies to such placements.
- 4:7 Time is of the essence in relation to payment and we may require earlier payment or cash upon delivery of the services if your credit worthiness becomes uncertain. All payments must be made in full without any set off or deduction whatsoever. If you fail to pay on time then without prejudice to any other remedy we may have to:
- i) Cancel this contract or suspend supply;
- ii) Set off any other payments you have made against amounts due; or
- iii) Charge you interest calculated daily and compounded monthly at 2% above the base rate of ANZ Bank at the date of payment and the costs of recovery (including on a full indemnity basis any legal costs).
- 4:8 If any supply made by us is in our view a taxable supply for GST purposes or an adjustment event occurs that causes a supply to be a taxable supply, we will be entitled to charge an additional amount to you for GST or other similar tax and you acknowledge and accept our right to charge an additional amount for GST or other similar tax.
- 5 **ONWARD REFERRAL:** Introductions are confidential. Should you pass on an introduction which results in an engagement of a candidate, either as an employee or any other capacity, to any other division or any related or associated company or firm, or any other employer, you will be liable to pay us a fee calculated in accordance with the fee schedule above, as if the candidate had been engaged by you. Such a fee will also apply where our temporary employees/contractors are transitioned to another employment agency/business for whatever reason and in whatever manner.
- 6 **SUITABILITY OF CANDIDATES:** Whilst we will make every reasonable effort to ensure the suitability of candidates, we do not accept responsibility or liability for any loss, expense, damage or delay arising in connection with a candidate irrespective of how they are caused and for any indirect or consequential loss or damage resulting from a breach of contract, tort or otherwise howsoever arising. You should provide adequate supervision and information to the contractor / temporary employee to ensure the necessary standard of work during the assignment. Once the contractor / temporary employee starts the assignment, the contractor / temporary employee is under your control and direction for the duration of the assignment. All acts, errors or omissions of the contractor / temporary employee, whether wilful or negligent, are your responsibility, as if the contractor / temporary employee was a member of your own staff and you agree to comply with all statutes, by-laws and other legal requirements in relation to the engagement of the contractor / temporary employee to which you are subject in respect of your own staff and you will indemnify and hold us harmless against all liability, loss, claims, fines, penalties and damage (including but not limited to our own losses and any third party claims and any legal costs on a full indemnity basis) arising out of or in connection with this Agreement or any act or omission of any candidate.
- 7 **OCCUPATIONAL HEALTH AND SAFETY:** We reserve the right to remove any employee from the work place if it is deemed to be unsafe or at risk. We also reserve the right to conduct safety audits /inspections to enable the health and safety of our employees. You are to provide all necessary OH&S training, site specific and work-specific induction required before any employee starts work as directed by the relevant work cover authority in your state. Should this not be possible you will inform Byron Thomas Recruitment Pty Ltd in order for us to ensure relevant training is completed. You will inform us of any change in job description, in order for us to reassess OH&S requirements of that individual. i.e. whether retraining or a replacement is required.
- 8 **REPLACEMENT GUARANTEE:** Should the performance of a contractor / temporary employee prove not to meet the requirements of the assignment as agreed, we will replace the temporary at no charge for the first four hours on a booking of less than one month, and at no charge for the first day on bookings of one month and over, providing we receive notification within 36 hours of commencement.