

Permanent Staff

1. Parties

- 1.1. These terms and conditions (“Terms”) are between ES2 People (ABN: 57 163 419 136) and any company or organisation (the “Client”) that requires the introduction of personnel for permanent employment (the “Candidate”).

2. Fee for service

- 2.1. The fee payable to ES2 People by the Client for the introduction of a Candidate is a percentage (as per the Permanent Placement Fee Schedule below) of the gross remuneration salary package value (+GST) payable to the Candidate including salary and superannuation and all other benefits such as car allowance or a company vehicle. Motor vehicles provided to Candidates will be valued at \$15,000 or the value provided by the Client, whichever is greater.
- 2.2. For retained assignment fees, whereby the Client has requested an exclusive service to seek Candidates, the Client will be invoiced in (3) instalments as set out in the fee schedule below. These fees are non-refundable and payable at commencement, shortlist acceptance and upon completion.

Standard Fee Structure

Assignment/Fee Type	\$0 - \$99,999	\$100,000 - \$149,000	\$150,000 - \$199,000	\$200,000 +
Contingency	15%	16%	17%	N/A
Retained	15%	16%	17%	20%
Commencement	5%	5%	6%	6%
Shortlist	5%	6%	6%	6%
Completion	*5%	*5%	*5%	*6%

* Or the balance of the total fee payable

3. Payment Terms

- 3.1. ES2 People will invoice fees on the date the Candidate commences with the Client and are to be paid no later than 14 days from the date stated on the invoice. In the event of non-payment, ES2 People reserves the right to charge interest at a flat rate of 2% per month on the outstanding amount.
- 3.2. Any fees payable under these Terms are exclusive of Goods and Services Tax (GST). GST charges will be added to all invoices.

4. Subsequent Employment

- 4.1. Standard fees will be paid by the Client if a Candidate introduced by ES2 People is not selected or does not accept the position originally introduced for but is subsequently engaged or employed by the Client within (6) months of the original introduction or Client interview, whichever is latest. In this instance guarantee period terms shall not apply to such placement.
- 4.2. Any Candidate introduction is confidential. In the event a Client:
 - 4.2.1. introduces a Candidate, originally introduced by ES2 People, to a third party; or
 - 4.2.2. an application is made to the Client by the Candidate and said Candidate is subsequently engaged or hired,the Client will pay a fee to ES2 People in line with standard fee structure.
- 4.3. In the event a Client engages or hires in any capacity any person who at the time of engagement or within (3) months prior was employed by ES2 People or within 12 months of the last date of contact with the ES2 People employee, the Client will pay a fee in line with standard fee structure.

5. Guarantee Period

- 5.1. If a Candidate recruited by ES2 People resigns from the Client's employment, or the Client chooses to terminate the Candidate's employment or engagement due to poor performance (after having notified ES2 People in accordance with clause 5.3) within three (3) months of commencement, provided that the Client:
 - 5.1.1. has notified ES2 People of the termination or resignation in writing and within seven (7) days of said termination;
 - 5.1.2. the termination or resignation is not because of redundancy or business rationalisation initiatives outside of the control of ES2 People and the Candidate;
 - 5.1.3. all fees owing to ES2 People have been paid within trading terms,ES2 People will have the exclusive right to replace said Candidate for a one (1) month period after the last day of the Candidate's employment with the Client. Should ES2 People be unable to source an adequate replacement for the Client, the Client will be issued a credit against the ES2 People fee. The credit will be valid for twelve (12) months from the date of the Candidate's termination or departure.
- 5.2. In the event a replacement candidate is employed or engaged on a lesser salary, no adjustment to the Candidate fee applies.
- 5.3. ES2 People are to be notified by the Client immediately of any performance issues related to a Candidate.

6. Reference Checking & Suitability

- 6.1. The Client is responsible for satisfying itself as to the suitability of the Candidate prior to engaging with the Candidate. This includes all necessary reference, background checks and testing. On request, ES2 People may undertake this task.
- 6.2. ES2 people are not liable for any untrue statements or misrepresentations made by a Candidate, or the accuracy of information provided by the Candidate.
- 6.3. ES2 People will make reasonable endeavours to confirm the experience, qualifications and skill level of the Candidate it sources for the assignment brief provided by the Client. ES2 People makes no representation as to the actual skill level or capability of any Candidate.

7. Client Obligations

- 7.1. The Client agrees to notify ES2 People immediately if a Candidate is selected for employment.
- 7.2. The Client is responsible for obtaining work or visa rights applicable under any laws and regulations and for ensuring the Candidate satisfies any medical requirements that may be applicable.
- 7.3. The Client agrees and acknowledges that from the date a Candidate commences employment with the Client and for the duration of that employment, ES2 People has no, and is expressly released from all, responsibility or liability to the Client and the Candidate in respect of remuneration, annual leave, personal/carer's leave, long service leave, public holidays, superannuation, redundancy payments or any other similar entitlement or benefits the Candidate may be entitled to receive under any law or industrial instrument.
- 7.4. The Client will be responsible for the allocation and payment of wages, superannuation, workers' compensation and public and professional liability insurance in relation to the work undertaken by the Candidates from the date the Candidates commence employment with the Client.

8. Liability & Indemnity

- 8.1. To the extent permitted by law, ES2 People and any of its employees, contractors and agents will not be liable to the Client for any loss incurred by the Client, be it direct, indirect or consequential arising from any breach of any expressed or implied term. Where liability arises which cannot be excluded, then ES2 People's liability will be limited to the re-supply of recruitment services, or the payment of the cost of having the services supplied again.

- 8.2. The Client acknowledges that ES2 People is not performing the services required of its Candidate. ES2 People's contractual duty is to provide Candidates qualified to perform the services required by the Client. From the time a Candidate reports to the Client, they are under the care, control and supervision of the Client for the duration of their employment with the Client.
- 8.3. The Client agrees that ES2 People is not liable to the Client in respect of any damage, loss or injury of whatsoever nature or kind, which is caused or contributed to by the acts or omissions of a Candidate to the extent that the Candidate has acted or omitted to act in accordance with the directions or instructions (direct or implied) of the Client.
- 8.4. Without limiting ES2 People's liability at law or in tort the Client agrees to:
 - 8.4.1. indemnify and keep indemnified ES2 People and its directors, officers, agents and assignees against any liability for any claims made against ES2 People or the Candidate arising out of or in connection with any breach by the Client of these Terms; or
 - 8.4.2. any loss, damage or injury suffered by a third party caused by any negligence or deliberate act by a Candidate in the course of performing work for the Client.
- 8.5. In relation to each of the indemnities in these Terms:
 - 8.5.1. the indemnity is a continuing obligation, separate and independent from the other obligations of a party and survives the expiration or earlier termination of contractual relations between the parties;
 - 8.5.2. it is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity conferred by these Terms; and
 - 8.5.3. a party is liable to pay to the party to be indemnified an amount equal to any loss suffered or incurred by an employee, officer or agent of that party.

9. Confidentiality, Privacy & IP

- 9.1. In line with the *Privacy Act 1988*, all information provided to the Client is private and to be kept confidential, regardless of the means required, and is provided for the sole purpose of enabling the client to determine a Candidate's suitability for employment.
- 9.2. ES2 People and the Client acknowledge that each party has no right or interest in respect of the Confidential Information of the other party and that all of the Confidential Information is and will be the sole and exclusive property of the party disclosing the Confidential Information. ES2 People and the Client must do everything necessary to keep the Confidential Information of the other party confidential.
- 9.3. "Confidential Information" means all confidential information and trade secrets of ES2 People or the Client whether verbal, written or in electronic format.
- 9.4. The Client agrees to comply with the *Privacy Act 1988* and keep confidential all resumes, pricing and all other material supplied by ES2 People.
- 9.5. The Client agrees and acknowledges that Candidates own the intellectual property rights contained in Candidates' resumes.

10. Suspension or Ceasing Provision of services:

- 10.1. ES2 People may in its complete discretion and without incurring any liability to the Client, cease or suspend provision of services to the Client or amend these Terms.
- 10.2. The Client must provide ES2 People with seven (7) business days' notice of cancellation or postponement of services that have not yet commenced. If the Client does not provide the notice as required then ES2 People may charge the Client as if the Candidate were engaged and had provided the services for the period of notice under these Terms, as well as all costs wasted as a result of the cancellation including accommodation and travel.
- 10.3. If the Client fails to pay in accordance with the Terms or otherwise breaches these Terms, ES2 People may, without prejudice to its other rights, call up monies owed to it by the Client, retain all monies

paid on account, or cease further services and recover from the Client all loss of profits arising there from.

11. General Terms

- 11.1. ES2 People will not be responsible for any delays caused by or in any way related to or arising out of any cause outside ES2 People's reasonable control. Delays due to force majeure do not relieve the Client from the obligation to pay for services already provided.
- 11.2. These Terms and the provision of the services will be governed and construed in accordance with the laws of Western Australia and the parties hereby agree to submit to the exclusive jurisdiction of a competent court in Western Australia.
- 11.3. A variation or waiver of, or any consent by a party to any departure from, a provision of these Terms is only effective if it is in writing and signed by the parties. That variation, waiver or consent is effective only to the extent for which it is made or given.
- 11.4. The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by these Terms does not operate as a waiver of that power or right. Any single exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under these Terms.
- 11.5. These Terms constitute the sole and entire agreement between the parties. A warranty, representation, guarantee or other term or condition of any nature that is not contained, recorded, or referred to in these Terms, is of no force or effect.
- 11.6. The covenants, conditions and provisions of these Terms that are capable of having effect after the expiration of these Terms will remain in full force and effect following the expiration of these Terms.

Terms & Conditions

These Standard Terms & Conditions of Business take effect once signed by a representative of the Client.

Acceptance of Terms

Date: _____

Client's Company

Client Representative:

Client Representative's Signature:

ES2 People Representative:

ES2 People Representative's Signature: