

# Terms & Conditions



PHILLIP RILEY

## 1. Parties

These terms of business are between each of Phillip Riley Limited, NZBN 9429047991071, trading as Phillip Riley, and any client of Phillip Riley, its subsidiaries or associates (hereafter called the "Client").

Unless otherwise agreed in writing with a Client, this document sets out the terms and conditions upon which Phillip Riley provide recruitment (whether permanent, temporary or contract personnel) and other consultancy services to a Client.

## 2. Acceptance of Terms & Conditions of Business

The acceptance of a resume, the interviewing of a candidate ("Applicant") or the engagement by a Client of a permanent, part-time, on-hired, casual and/or temporary worker provided by or through Phillip Riley (hereafter called the "Worker") or the signing of the Worker's timesheet shall be deemed to be an understanding of, agreement to and acceptance by the Client of the Terms set out herein.

## 3. Confidentiality

All information supplied to the Client (whether directly or indirectly) in relation to an Applicant, Worker or Phillip Riley, is provided on a strictly confidential basis. The Client must keep all such information secret and confidential and may use the information solely for the purpose of assessing the suitability of Applicants or Workers.

The Client must not disclose such information to any third party without the prior written consent of Phillip Riley unless disclosure is required by law. The Client will be liable for any unauthorised use or disclosure of such information by its employees, contractors or other representatives.

## 4. Liability

Phillip Riley will take reasonable steps to ensure the suitability of an Applicant selected on behalf of a Client, or a temporary Worker provided to a Client. Unless expressly prohibited by any applicable law, Phillip Riley excludes all liability to the Client (whether in contract, tort, under any statute or otherwise) for loss or damage of any kind (including direct, indirect and consequential loss and damage, physical injury, property damage, loss of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind), however caused arising out of or in any way related to the services or the acts or omissions of any Applicant or Worker.

The Client acknowledges that Phillip Riley is not performing the services set out in the assignment description; but are instead the supplier of Workers, at the Client's request, to perform the work that the Client has described in the assignment description.

The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon Phillip Riley which cannot by law (or which can only to a limited extent by law) be excluded. Phillip Riley excludes all such warranties, conditions or obligations to the extent permitted by law and, where liability cannot be so excluded under any relevant applicable law then the Client's remedies are limited to those set out in the relevant legislation.

For clarity, the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires services from Phillip Riley for the purposes of a business in terms of sections 2 and 43 of that Act.

## 5. Force majeure

Phillip Riley will not be liable to you if it is prevented from or delayed in the performance of its obligations under any engagement by any act, event or cause that is beyond its reasonable control, including:

- i. an act of God, fire, earthquake, storm, flood, landslide, explosion, power failure, sabotage, cyber- attack, epidemic, quarantine, national emergency, radiation or radioactive contamination, or act of war; or
- ii. an action or inaction of Government, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order,

to the extent that the act, event or cause directly or indirectly results in Phillip Riley being prevented from or delayed in performing one or more of its material obligations under these Terms.

The time for performance of any Phillip Riley obligation under an engagement and any exclusive period shall be extended accordingly.

## PERMANENT PLACEMENTS

### 6. Permanent Placements

Our fees for services are calculated as a percentage of gross annual remuneration, including any Kiwisaver contributions and all other tangible benefits to be paid to the successful candidate. If a motor vehicle is included as part of the successful candidate's package, it is valued at \$15,000 per annum for the purposes of determining gross annual remuneration.

If Phillip Riley is engaged as the exclusive provider of recruitment services for the purpose of permanent placements, the Exclusive Fee will apply. If Phillip Riley is engaged non-exclusively, the Non-Exclusive Fee will apply.

Unless otherwise agreed in writing between us, our standard fee structure and guarantee periods for exclusive and non-exclusive placements are:

Gross Annual Remuneration	Non-Exclusive Fee (ex-GST)	Exclusive Fee (ex-GST)	Guarantee Period
< \$100,000	12.5%	10.5%	3 months
\$100 – 150,000	15%	13%	3 months
\$150 – 200,000	17.5%	15.5%	3 months
> \$200,000	20%	18%	3 months

Fees for part-time Workers will be charged at the above rates calculated on full time equivalent salary (based on a 38-hour week and 52 weeks per year).

A minimum placement fee of \$3,000 (ex-GST) will apply for each permanent placement made with a Client, regardless of salary level for the relevant position. Placements made at the minimum fee do not include a guarantee.

### 7. Executive Placements

The fee for executive placements is payable in three instalments:

- 33% of the total fee upon acceptance of assignment (non-refundable);
- 33% of the total fee upon presentation of candidate short-list (non-refundable);
- Balance of the total fee upon the selected Applicant's acceptance of the Client's offer of employment (including any adjustment required as a result of salary negotiation by that Applicant).

The guarantee period for replacement for executive placements is 6 months from the commencement date of the successful candidate. The conditions of guarantee are set out in clause 13 below.

### 8. Fee for Service

Phillip Riley fees are for professional services relating to the recruitment and/or selection and/or presentation of candidates for employment, and/or consulting services.

Phillip Riley services shall be deemed to be completed to the satisfaction of the Client when a candidate who is presented by Phillip Riley accepts an offer of employment with the Client.

### 9. Psychometric Assessment

Phillip Riley will arrange for psychometric assessment of candidates when so instructed by the Client. Fees for such assessments are payable by the Client, unless otherwise agreed.

Phillip Riley may make available to the Client the result of role behavioural and/or psychological and/or skills evaluations conducted in relation to Applicants or Workers. Phillip Riley does not verify the reliability or accuracy of the results so provided and accepts no liability in relation to the provision of inaccurate, misleading or otherwise incorrect results whether or not arising from the negligence of Phillip Riley, the suppliers of

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the role behavioural and/or psychological and/or skill evaluations or any other cause whatsoever.

Phillip Riley is not responsible for any damage or loss arising in any way from the use which may be made of the result by the Client or any other person. The Client must keep the role behavioural and/or psychological and/or skills evaluations results confidential and they must only be used for the purpose of assessing the suitability of Applicants or Workers.

## 10. Advertising

If an advertising campaign is requested and agreed between Phillip Riley and the Client, the Client will be charged at a pre-determined cost for the specific advertisement. Where the Client cancels an advertisement, they will be liable for any costs associated with the cancellation. This includes the full cost of the advertisement where withdrawal is not possible due to media booking deadlines. Any GST payable in connection with any advertising requested by the Client will also be at the Client's expense. All such expenses are payable within 7 days of the date of invoice.

## 11. Subsequent Employment

Where any candidate introduced (whether in writing or verbally) by Phillip Riley is employed by the Client during the introduction period, then our standard fee (as set out in clause 6) will apply.

Such fee will apply even if the candidate is employed by the Client in a different capacity, or on a different basis, to that for which the candidate was introduced. The introduction period is twelve (12) months from the date the candidate was introduced to the Client.

Similarly, where any temporary or contract employee introduced by Phillip Riley is employed by the Client, or by a subsidiary or affiliate of the Client, within six (6) months of the date of completion of their temporary or contract assignment, then our standard fee (as set out in clause 6) will apply, regardless of the capacity in which the employee is engaged.

## 12. Payment Terms for Permanent Placements

**Our payment terms are strictly 14 days from the invoice date.** We reserve the right to charge interest on monies outstanding past the due date.

## 13. Guarantee Period for Permanent Placements

The Client's sole redress for a Worker's employment ceasing within the guarantee period is set out below in this clause 13.

Unless agreed otherwise, during the relevant guarantee period, we will use our best efforts to identify a suitable replacement candidate for an original Applicant free of charge only once, subject to the following conditions:

- the fee payable for the original Applicant has been paid within 14 days of the original Applicant's invoice date;
- the original Applicant's cessation of employment is due to unsatisfactory performance and not redundancy, restructuring, change in job description, discrimination, any form of workplace harassment, company closure or takeover;
- we are notified in writing within seven (7) days of the original Applicant's departure; and
- the job description for the replacement candidate is identical to that of the original Applicant.

The fee for the original service is non-refundable. In the event that we are unable to identify a suitable replacement candidate within a reasonable time, 50% of the original fee will be credited to the Client's account. This credit will be valid for a six (6) month period, and may only be used against future permanent placements, but may not be offset against invoices charged for temporary placements or advertising.

The Client acknowledges and agrees that in tight labour market conditions or where the position requires unique skills or qualifications, it will not always be possible to identify a replacement candidate within a reasonable time. Phillip Riley's liability for failure to identify a replacement candidate will in no event exceed the provision of credit of 50% of the original fee as set out above.

If the replacement candidate is engaged by the Client and their gross annual remuneration is higher to that of the original Applicant, an invoice for an additional fee payable and assessed by reference to that portion of the gross annual remuneration in excess of the previous amount may be issued (on 14-day payment terms) at our discretion.

The guarantee is limited to the provision of a single replacement candidate for any original Applicant placed with the Client by Phillip Riley. For the avoidance of doubt, Phillip Riley's obligations arising under this clause 13 will be satisfied in full by identifying a replacement candidate for the job description, regardless of whether the Client ultimately engages the replacement candidate.

## TEMPORARY, CONTRACT & SPECIAL PROJECT PLACEMENTS

### 14. Supervision of the Worker

The Worker provided by Phillip Riley will be under the direction and control of the Client in all respects from the time the Worker reports to take up duties and for the duration of the employment. The Client agrees to be responsible for all acts and errors or omissions by such Worker, be they wilfully negligent or otherwise, as though the Worker were in the permanent employ of the Client and the Client will in all respects comply with all statutes and regulations relating to conditions of employment of the Worker as if the Worker were employed on the permanent staff of the Client.

Because our Workers work under the Client's control, supervision and direction:

- Subject to sub-paragraph (ii) of this sub-clause, Phillip Riley will not be liable to the Client for, and the Client will hold us harmless against any liability for, damage, loss or injury of whatsoever nature or kind, however caused whether directly or indirectly and whether by Phillip Riley's negligence or that of one of our Workers whilst they are working under the Client's control, supervision or direction.
- Sub-paragraph (i) of this sub-clause does not reduce our liability, directly incurred, to the extent to which we may have contributed to any such damage, loss or injury.

### 15. Temporary Charges

Clients will be charged an hourly charge rate based upon the Worker's rate of pay, which will be confirmed with the Client prior to the Worker's commencement. The hourly charge rate will include 8% holiday pay and any statutory payments required, for example an additional 50% loading if the Worker works a public holiday.

The minimum fee invoiced for a temporary Worker will be for a period of four (4) hours, regardless of the number of hours actually worked.

### 16. Guarantee Period for Temporary Placements

Should a temporary Worker be unsatisfactory for any reason, and we are notified within four (4) hours of the worker's commencement, no fee will be charged for those four (4) hours.

### 17. Temporary Worker Offered Permanent Placements

No guarantee period will apply in the case of Workers placed by Phillip Riley with a Client on a temporary basis being offered, and accepting, permanent positions with that Client. Our standard fee is payable in accordance with clauses 6 and 7.

Should you wish to employ one of our contractors directly, the following fee schedule will apply:

Length of Placement	% of Permanent Placement fee
0-3 Months	100%
3-6 Months	75%
6-9 Months	50%
9-12 Months	25%
After 12 Months	Free

### 19. Contract & Special Project Placements

Fees and guarantee periods for contract or special project personnel are subject to negotiation. For the avoidance of doubt, all placements by Phillip Riley will be subject to these Terms and Conditions, except where

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the Client and Phillip Riley otherwise agree in writing.

## 20. Payment Terms for Temporary Placements

Our payment terms are strictly 7 days from invoice date. We reserve the right to charge interest on monies outstanding past the due date.

## 21. Your Health & Safety Obligations

The Client must comply with all applicable laws in relation to Workers assigned to the Client or working at the Client's premises, and agrees to:

- assume the primary duty of care in respect to all Workers;
- provide a safe working environment for all Workers;
- notify Phillip Riley of any change to the Worker's job description;
- provide the Worker with safe working instructions, appropriate training and supervision, and a site safety induction;
- provide the Worker with any PPE required to safely perform their tasks, and instructions on the proper use of such PPE.

## 22. Miscellaneous

If at the request of the Client the services of a Worker are withdrawn for any reason before completion of the designated task or before expiration of the agreed time and as a result the Worker obtained redress by way of compensation or otherwise from Phillip Riley, the Client will reimburse Phillip Riley the cost of providing the redress including legal costs.

## 23. General

- These Terms and Conditions contain the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.
- No amendment or variation of these Terms and Conditions is valid or binding on a party unless made in writing executed by all parties.
- A waiver is not valid or binding on the party granting that waiver unless made in writing.
- This contract will be governed by and construed according to the law of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- Any failure by Phillip Riley to enforce any right or provision under these Terms and Conditions shall not be construed as a waiver of any of Phillip Riley's rights

- The relationship between the parties is that of independent contractors and the parties are not partners, joint ventures or principal and agent.

## ACCEPTANCE

Yes, I have read and understood the above Terms & Conditions of Business and agreed to the following payment terms:

- 14 days from invoice date for permanent placements
- 7 days from invoice date for temporary placements

Signed for and on behalf of:

Company: \_\_\_\_\_

Name: \_\_\_\_\_

NZBN: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_/\_\_/

Phillip Riley Consultant: \_\_\_\_\_



## Work Order No [\*]

*[template only – not for signing]*

This Work Order is entered into under the terms of the Business Agreement dated [xxxxxx] (**Agreement**) between Phillip Riley Limited NZBN 9429047991071 (**Phillip Riley**) and [Client company name] NZBN [xxxxxxxxxx] (**Client**).

Phillip Riley agrees to provide the Nominated Consultant to Client on the terms of this Work Order and the Agreement.

### Work Order Details

<b>Nominated Consultant:</b>	[name]
<b>Work:</b>	[Role, Responsibility, and specify whether the Nominated Consultant must be registered or licensed to perform the Work]
<b>Site:</b>	[location]
<b>Work Order Term:</b>	Start Date: [xxxxxxxxxx] Duration / End Date: [xxxxxxxxxx]
<b>Hours:</b>	8.5 hours per day, including 1 hour of unpaid breaks
<b>Client Approver:</b>	[name or position]
<b>Charges:</b>	[insert Charges based on the rates in the Schedule * TRP for this position. As an example only: Contractor Base Pay & Super, Oncosts, Administration & PR Margin Total Charge Rate = \$x per day (+ GST), exclusive of Expenses
<b>Client Responsibilities:</b>	[add any specific facilities, services, resources or other items that Client is responsible for providing]

**EXECUTED BY THE PARTIES** as an Agreement:

PHILLIP RILEY LIMITED	
Signature:	[do not sign – template only]
Print Name:	
Title:	
Date:	

XXX	
Signature:	[do not sign – template only]
Print Name:	
Title:	
Date:	