



Terms of Business

Current As Of 13th January 2019

Purple Patch Consulting
ACN 629 997 084
purplepatchconsulting.com

Level 5, 619 Pacific Highway
ST LEONARDS NSW 2065

1 Definitions

- (a) **Agreement** means these Terms of Business;
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales;
- (c) **Business Hour** means an hour in the period between 8am to 6pm on a Business Day;
- (d) **Client** means the person, firm, business or corporation obtaining services from PPC under the Agreement and includes employees or subsidiary companies of the Client within the meaning of the Corporations Act, as described in Item 2 of the Schedule;
- (e) **CV** means curriculum vitae, resume or other information which identifies the PPC Candidate;
- (f) **Conversion Fee** means a fee payable in accordance with Clause 4.5(b);
- (g) **Credit Note** means a credit note provided by PPC to the Client;
- (h) **Employer** means the person, firm, business or corporation employing or engaging the PPC Candidate and includes employees or subsidiary companies of the Employer within the meaning of the Corporations Act;
- (i) **Location** means the location or locations specified by the Client at which the PPC Candidate is to perform the Role;
- (j) **Permanent** means the employees who are employed on an ongoing basis until the employer or employee ends the employment agreement;
- (k) **Permanent Recruitment Fees** means the fees and charges set out in Clause 7 of these Terms of Business;
- (l) **PPC** means Purple Patch Consulting Pty Ltd (ACN 629 997 084), as described in Item 1 of the Schedule;
- (m) **PPC Candidate** means a person or group of persons who have been sourced and or identified by PPC and put forward to the Client;
- (n) **Role** means the Role specified by the Client to PPC;
- (o) **Services** means the services described in Clause 2;
- (p) **Special Conditions** means the provisions in Item 3 of the Schedule;
- (q) **Timesheet** means a timesheet in writing or electronic form or in a form agreed to between the parties;
- (r) **Top 5 Offering** means the service offering by PPC to the Client where PPC will provide 5 CVs for the Role for the Top 5 Offering Fee;
- (s) **Top 5 Offering Fee** means \$1,995 plus GST;
- (t) **Temporary Recruitment Fees** means the fees and charges set out in Clause 4 of these Terms of Business;
- (u) **Temporary Worker** means a PPC Candidate who is employed by PPC or is an independent contractor to PPC and has been selected by the Client to perform the Role under the sole direction and control of the Client at the Location and who is not engaged by the Client as a Permanent employee of the Client; and
- (v) **Total Package** means the estimated gross value of all remuneration and other benefits in respect of the Role during the first 12 months of employment, including (without limitation) salary, superannuation, motor vehicle allowances and other benefits and a reasonable estimate of any future guaranteed incentives, bonus earnings and commissions. Company supplied motor vehicles will be valued at \$20,000 irrespective of the vehicle.

2 General

- 2.1 The Client acknowledges and agrees that by accepting details of a PPC Candidate as a result of an introduction or accepting an engagement, it is bound by these terms and conditions.
- 2.2 This Agreement may be accepted by the Client in the followings ways:
 - (a) in writing by signing and returning a copy of these Terms of Business to PPC;
 - (b) by its conduct;
 - (c) by providing instructions to PPC;
 - (d) by accepting information of a PPC Candidate;
 - (e) by meeting with a PPC Candidate; or
 - (f) passing on the personal information of a PPC Candidate to a third party.
- 2.3 The Client agrees to adhere to the provisions of any applicable law, regulation or award in all its dealings with any PPC Candidate and PPC.
- 2.4 The Client agrees and acknowledges that an introduction by PPC includes but is not limited to:
 - (a) the Clients' interview or contact of an PPC Candidate by phone, email, face to face, video conference;
 - (b) an arrangement of an interview, working trial or examination; or
 - (c) the passing to the Client of a CV of a PPC Candidate,
 and which leads to an engagement of the PPC Candidate by the Client.
- 2.5 The Client agrees and acknowledges that this Agreement and any introductions by PPC must be kept confidential.
- 2.6 Definitions of words used in these Terms of Business are set out in Clause 1.
- 2.7 Where there is inconsistency between a Special Condition and a provision of this Agreement, the Special Condition shall prevail.
- 2.8 In this Agreement, unless otherwise indicated by the context:
 - (a) words importing the singular include the plural and vice versa;
 - (b) headings are for convenience only and do not affect interpretation of this Agreement;
 - (c) a reference to a clause, paragraph, schedule is a reference to a clause, paragraph, schedule of this Agreement;
 - (d) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
 - (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
 - (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
 - (h) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally;
 - (i) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
 - (j) including and similar expressions are not words of limitation.

3 Services

- 3.1 The services of PPC includes the following:
 - (a) the identification and introduction of personnel to the Client to enable the Client, in the

Client's discretion to select and make written offers to engage such personnel:

- (i) as a Permanent employee of the Client (**Permanent Recruitment Services**); or
 - (ii) as a Temporary Worker to perform the Role under the sole direction and control of the Client at the Location (**Temporary Recruitment Services**);
 - (b) the Top 5 Offering;
 - (c) human resources services;
 - (d) training and development services; and
 - (e) consulting or advisory services.
- 3.2 At the request of the Client, PPC may provide the Top 5 Offering to the Client, in which:
- (a) no further Permanent Recruitment Fee or Temporary Recruitment Fee is payable by the Client if a successful placement is made for the Role by a PPC Candidate from the 5 CVs tendered by PPC under the Top 5 Offering;
 - (b) the Top 5 Offering Fee must be paid upfront by the Client and is not refundable after receipt of the 5 CVs tendered by PPC under the Top 5 Offering; and
 - (c) at the absolute discretion of PPC the Top 5 Offering Fee may be provided as a Credit Note to the Client for PPC services determined by PPC, in relation to the Role specified for the Top 5 Offering.
- 3.3 PPC makes no express or implied warranty or representation to the Client as to the accuracy, validity or relevance of any information which PPC receives from the PPC Candidate or any third party in respect to the identity, skills, experience, qualifications or suitability of any PPC Candidate and the Client agrees that no claim or demand can be made against PPC for any loss, damage, expense or delay caused directly or indirectly by the negligence, misconduct, dishonesty or lack of qualifications, skill or experience of a PPC Candidate.
- 3.4 The Client must inform the PPC in writing if it wishes to do perform reference checks on any candidates as the candidate must be notified before they are undertaken.
- 4 Temporary Recruitment – Fees**
- 4.1 In consideration of PPC providing Temporary Recruitment Services, the Client must pay PPC the Temporary Recruitment Fees (plus GST).
- 4.2 The engagement of a Temporary Worker and the receipt by PPC of a signed Timesheet for the Temporary Worker shall be deemed conclusive proof of the actual hours worked by the Temporary Worker as set out in the Timesheet and deemed an understanding, acceptance of, and agreement to these Terms of Business by the Client. For the avoidance of any doubt the Client bears sole responsibility for the submission of all Timesheets to PPC and must ensure that all Timesheets submitted by a PPC Candidate have been reviewed and approved by the Client and contain no errors or inaccuracies.
- 4.3 The Client agrees to pay PPC the hourly charges, advised at the time of booking in writing the Temporary Worker, for all hours actually engaged from the time the Temporary Worker commences duties. This hourly charge includes the Temporary Workers hourly rate, payroll tax, superannuation and workers compensation. Travelling, hotel and other expenses that PPC must pay under any award or industrial agreement, as may be agreed in advance, shall be itemised on the invoice in addition to this charge. PPC may increase the Temporary Recruitment Fees by written notice to the Client to take account of any increases to the matters referred to in this clause.
- 4.4 Temporary Recruitment Fees are invoiced for the actual time worked by the Temporary Worker as

recorded in the timesheets submitted by the Temporary Worker. Upon receipt of a Timesheet the Temporary Worker, an invoice for the time worked plus GST will be generated and sent to the Client.

- 4.5 In the event that PPC has introduced a PPC Candidate to the Client as a Temporary Worker in the Role specified by the Client (**Initial Introduction**) then:
- (a) in the event of any engagement of that PPC Candidate as a Temporary Worker (whether through PPC or any other third party) by the Client during a period of twelve (12) months immediately following the Initial Introduction, the Client must pay PPC the Temporary Recruitment Fee (plus GST) with respect to such engagement of that PPC Candidate as a Temporary Worker for the entire period of such engagement of that PPC Candidate by the Client:
 - (i) in the Role; or
 - (ii) any other Role with the Client; or
 - (b) if the PPC Candidate is presently engaged, (or has in the immediately preceding twelve (12) months ceased to be engaged) by the Client as a Temporary Worker and the Client engages or makes an offer to engage that Temporary Worker as a Permanent or fixed term employee of the Client (regardless of the Role in which that Temporary Worker is engaged) then the Client must pay PPC a Conversion Fee as follows:

Period of service as Temporary Worker with Client	Conversion Fee applicable	Guarantee
0-3 months	100% of Permanent Recruitment Fees Applies	Refer to clause 6
3-6 months	90% of Permanent Recruitment Fees Applies	No guarantee
6-9 months	80% of Permanent Recruitment Fees Applies	No guarantee
9-12 months	70% of Permanent Recruitment Fees Applies	No guarantee
12 months +	50% of Permanent Recruitment Fees Applies	No guarantee

- 5 Permanent Recruitment – Fees**
- 5.1 In consideration of PPC providing Permanent Recruitment Services, the Client must pay PPC the Permanent Recruitment Fee (plus GST).
- 5.2 Upon the Client's selection and written instruction to PPC to engage a PPC Candidate as a permanent employee of the Client in the Role, PPC must issue the Client with an invoice for the Permanent Recruitment Fee. Invoices are issued on the commencement date of the placed PPC Candidate.
- 5.3 In the event that PPC introduces a PPC Candidate to the Client as a potential Permanent employee of the Client in the Role (**Initial Introduction**), then the

Client must pay PPC the Permanent Recruitment Fee (plus GST) with respect to the engagement of that PPC Candidate (or any offer of engagement made by or at the direction of the Client of that PPC Candidate) in the Role or any other Role with the Client that occurs within 12 months of the date of the Initial Introduction.

- 5.4 The Permanent Recruitment Fee for the engagement by the Client of a Permanent employee on a part time basis will be calculated and payable on the basis of the full time equivalent salary and wages payable to that Permanent part time employee.
- 5.5 A minimum Permanent Recruitment Fee of \$7,000 plus GST is payable for all engagements of Permanent employees by the Client.

6 Permanent Recruitment - Three Month Guarantee

- 6.1 The guarantee in this Clause 6 only applies if the Client strictly complies with Clause 5 and is only applicable for Permanent Recruitment Services.
- 6.2 In the event that:
 - (a) the Permanent employment of the PPC Candidate engaged by the Client is terminated by the Client within the first 12 weeks of employment due to the person being unsatisfactory for the Role (for whatever reason); and
 - (b) the Client notifies PPC in writing of the fact of termination of the PPC Candidate within 7 days of the date of termination, then the Client may request that PPC source a replacement PPC Candidate, in which case the Client agrees to grant to PPC the exclusive rights for a period of 30 Business Days to source the replacement PPC Candidate and agrees to collaborate with PPC during this 30 Business Day exclusivity period (**Replacement Exclusivity Period**).
- 6.3 Should PPC be unable to provide a replacement PPC Candidate acceptable to the Client after 30 Business Days, the Client may request in writing to PPC by reference to this Clause 6.3, to provide Permanent Recruitment Services for the Role and if a candidate is placed for the identical Role by PPC within 12 months from the last day of the Replacement Exclusivity Period, then no fee is payable for the Permanent Recruitment Services, provided that this Clause 6.3 applies on one occasion only.
- 6.4 The guarantee will not apply if the termination of the PPC Candidate's employment is the result of a change in the job specification, workplace conditions (including location), restructure or retrenchment.
- 6.5 The Client agrees and acknowledges that if Client re-engages any PPC Candidate whose employment has been terminated by the Client within a period of 24 months after termination, the full Permanent Recruitment Fee or full Temporary Recruitment Fee as the case may be is immediately payable to PPC and the Client must inform PPC immediately of any such re-engagement.

7 Permanent Recruitment - Fee Structure

- 7.1 The Permanent Recruitment Fee for Permanent Recruitment Services are as follows:
 - (a) **Exclusive Basis** – where the Client engages PPC to provide the Permanent Recruitment Services on an exclusive basis no other person (including internal client company referrals) will be retained by the Client to provide services similar to the Permanent Recruitment Services for 30 Business Days. After this time PPC will be retained on a non-exclusive basis and the non-exclusive rate will apply as set out in sub-paragraph 7.1(b). Should the client engage PPC on an exclusive basis and subsequently cancels the engagement or engages another person within the 30 Business Days exclusivity

period, a \$1,000 cancellation fee applies to the cancelled engagement.

Total Package (Full time equivalent basis)	Permanent Recruitment Fee as a percentage of Total Package
Salary to \$59,999	15%
Salary from \$60,000 - \$120,000	18%
Salary from \$120,000 upwards	20%

(b) **Non-Exclusive Basis**

Total Package (Full time equivalent basis)	Permanent Recruitment Fee as a percentage of Total Package
Salary to \$59,999	17%
Salary from \$60,000 - \$120,000	20%
Salary from \$120,000 upwards	25%

8 Payments

- 8.1 The Client must pay PPC the Temporary Recruitment Fee (plus GST) within 7 days of the date of the invoice by electronic funds transfer to the PPC nominated bank account or as directed otherwise.
- 8.2 The Client must pay PPC the Permanent Recruitment Fee (plus GST) within 7 days of the date of the invoice by electronic funds transfer to the PPC nominated bank account unless otherwise agreed in writing by an authorised person of PPC.
- 8.3 The Client must pay PPC the Top 5 Offering Fee (plus GST) upfront before PPC undertakes any services.
- 8.4 For the avoidance of doubt, any amendment to the payment terms detailed in this Agreement must be agreed in writing by an authorised person of PPC prior to the engagement of any PPC Candidate and PPC may require credit checks to be provided from the Client.
- 8.5 Where agreed, PPC will incur expenses and disbursements including but not limited to:
 - (a) advertising the Role in agreed newspapers, magazines and/or other media;
 - (b) fees for career management, coaching, outplacement, medical or psychological services; and
 - (c) costs associated with delivering the Services, the Client agrees to reimburse PPC for expenses and disbursements incurred by PPC within 7 days of receipt of an invoice from PPC.
- 8.6 If the Client is in default of making payment under the Agreement:
 - (a) PPC may charge interest at a rate of 10% per annum on the overdue amount, from the date when payment becomes due until the date payment is received in full; and
 - (b) the Client will be liable for all costs and disbursements including legal cost due to its default.
- 8.7 For the avoidance of any doubt, the value of any Credit Note issued does not entitle the Client to apply the value of that Credit Note as an offset against any other amounts due and payable by the Client to PPC pursuant to the Agreement. The Credit Note is to be applied to offset amounts agreed to in writing by PPC.

- 8.8 If requested by the Client, PPC (in its absolute discretion) may agree to provide an payment option where the Permanent Recruitment Fee is to be paid in equal monthly installments over 12 months and PPC (in its absolute discretion) may:
- (a) require a credit check to be provided by the Client;
 - (b) increase the Permanent Recruitment Fee by setting the percentage of the Total Package (and which must not be less than 20%); and
 - (c) waive any monthly payments if the PPC Candidate's employment is terminated by the Client within the first 12 months.
- 9 No assignment**
The rights, duties and obligations of PPC and the Client under this Agreement are personal to PPC and the Client and must not be assigned.
- 10 Disputes**
- 10.1 If the parties are unable to agree on any matter under this Agreement either of them may give written notice to the other stating details of the matter in dispute and requiring that the matter be resolved by a meeting between the parties.
- 10.2 The parties must meet in good faith to seek to resolve any area of dispute. The parties must meet together with 7 days of the serving of notice of a dispute under this Agreement.
- 10.3 If the parties cannot resolve the dispute within 7 days of the initial meeting as set out in clause 10.2, the parties must refer the dispute to mediation.
- 10.4 In the event that the parties cannot agree to the appointment of a mediator, either party may refer the dispute to the President of the Law Society of New South Wales to appoint the mediator.
- 10.5 The parties must mediate the dispute with a mediator commonly agreed between the parties or with the mediator appointed under Clause 10.4:
- (a) in good faith with a genuine commitment to participate; and
 - (b) in accordance with the mediation guidelines of the Law Society of New South Wales.
- 10.6 The parties to the dispute are entitled to be represented by a qualified legal practitioner at any such mediation.
- 10.7 The parties agree to meet equally the costs of their own representation and to share equally in the costs incurred by the mediation being conducted.
- 11 Liability and Indemnities**
- 11.1 The Client acknowledges that any PPC Candidate's details are based on information provided to PPC by the candidate, their referees, and other third party organisations as relevant and agrees that PPC is not liable for any errors, omissions, inaccuracies or incorrect conclusions.
- 11.2 The Client acknowledges and agrees that they are responsible for the final recruitment decision and must satisfy themselves as to the suitability of the PPC Candidate.
- 11.3 The Client agrees PPC is not liable for any loss, damage, costs or compensation (whether direct or indirect) which may be suffered by the Client, or for which the Client may become liable, arising from:
- (a) the introduction by PPC of PPC Candidates (or delay in any such introduction); or
 - (b) the failure of a PPC Candidate to accept an offer of employment or contract assignment.
- 11.4 To the extent permitted by law, PPC excludes all liability for breach of any term, implied term or warranty in connection with the performance of its obligations under the Agreement.
- 11.5 Where liability for a term or any term implied by law cannot be excluded, and to the extent permitted by law, PPC's liability for any breach of such an implied term is limited (at PPC's election) to:
- (a) supplying the services again; or
 - (b) the cost of having the services supplied again.
- 11.6 The Client agrees that PPC is not liable to any other parties in any circumstances for:
- (a) any economic loss or damage including any loss of revenue, profits, actual or potential;
 - (b) any loss of business opportunities, contracts or anticipated savings or profits; or
 - (c) any indirect or consequential loss or damage.
- 11.7 The Client indemnifies PPC (and keeps PPC indemnified) on a full indemnity basis in respect of all losses, liabilities, costs or claims arising from or related to:
- (a) the acts, omissions or default of the Client;
 - (b) the acts, omission or default by any Employers;
 - (c) the actions or omissions of a PPC Candidate, performing the Role for the Client, whether wilful or negligent and whether or not occurring at the Client's premises or the place where the Role is performed;
 - (d) any failure or alleged failure of a PPC Candidate, to duly perform his or her obligations;
 - (e) personal injury or death of a PPC Candidate, or any other person howsoever arising from, or related to the performance by a Candidate of his or her obligations;
 - (f) damage to any property arising from, or related to the performance by a PPC Candidate, of his or her obligations;
 - (g) any occasion when an Temporary Worker carrying out the Role with the Client is required to attend jury duty; and
 - (h) any omission, inaccuracy or conduct of the Client in relation to the recruitment services.
- 11.8 The Client further indemnifies PPC (and keeps PPC indemnified) on a full indemnity basis in respect of all claims related to the PPC Candidate's Role with the Client, including but not limited to termination of the Role by the Client.
- 12 GST**
- 12.1 Unless otherwise provided in this Agreement, any moneys payable under this Agreement have been calculated without regard to GST.
- 12.2 Any amount which is payable on account of GST as a consequence of any supply made under this Agreement is to be paid to the party making the supply at the same time as payment is made for the relevant supply.
- 13 Notices**
- 13.1 A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):
- (a) delivered personally, at the time it is delivered to the party;
 - (b) sent by pre-paid mail to the address of the addressee specified in the Schedule:
 - (i) from Australia to an address within Australia, on the second Business Day after posting;
 - (ii) from Australia to an address outside Australia or from outside Australia to an address within Australia, on the fifth Business Day (at the address to which it is mailed) after posting;
 - (c) sent by fax to the fax number of the addressee with acknowledgment of receipt from the fax machine of the addressee before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (d) sent by email to the email address of the addressee or such other email address

notified as being the email address to use for the purposes of this clause:

- (i) where the email is sent during a Business Hour on a Business Day, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email was sent; or
- (ii) where the email is sent after the end of the last Business Hour on a Business Day or on a non-Business Day, the email will be deemed to be received at the beginning of the first Business Hour on the next Business Day.

13.2 The address for service of each party is set out in the Schedule. A party may change its address for service by giving notice of that change in writing to the other parties.

14 Waiver or variation

14.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

14.2 The exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

14.3 The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

15 Governing law and jurisdiction

15.1 This Agreement is governed by the laws of New South Wales.

15.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

16 Further assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

17 Counterparts

17.1 This Agreement may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document and the date of this Agreement will be the date on which a counterpart is executed by the last party.

17.2 The exchange of executed counterparts by email or fax will create a binding Agreement.

18 Whole agreement

In relation to the subject matter of this Agreement:

- (a) this Agreement is the whole agreement between the parties; and
- (b) this Agreement supersedes all oral and written communications by or on behalf of any of the parties.

19 No reliance on warranties and representations

In entering into this Agreement, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

This clause does not apply to warranties and representations that this Agreement expressly sets out.

20 Severance

20.1 If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

20.2 If any such severance substantially affects or alters the commercial basis of this Agreement the parties hereto will negotiate in good faith to amend and modify the relevant provisions, terms and parts of this Agreement as may be necessary or desirable in the circumstances.

20.3 If PPC is prevented from or delayed in the performance of this Agreement by an Act of God or by or in consequence of war, riot, civil commotion or military or usurped power by any strike, lock-out, stoppage, accident, fog or storm, PPC shall not thereby be liable to any other parties for any breach of obligation under this Agreement and time for performance of PPC's obligations, shall be extended accordingly.

21 No merger

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

22 Consents and approvals

Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval