

Terms & Conditions of Placement

Definitions

"ACL" means the Australian Consumer Law Schedule to the Competition and Consumer Act;

"Agency" means Australian Work Force Pty Ltd and its successors and assigns;

"Agreement" means any agreement for the provision of Services by the Agency to the Client;

"Candidate" means the individual identified and introduced by the Agency for the Client's particular permanent workforce needs, whether or not successfully employed by the Client;

"Client" means the Client or any person acting on behalf of and with the authority of the Client acquiring Services from the Agency (and where the context so permits shall include the Candidate as hereinafter defined);

"consumer" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if the Client is a consumer under the Agreement;

"Labour Fees" means the hourly labour hire fees for the Temporary Candidate in providing labour for the Client;

"Package" means the Candidate's total annual remuneration package including base salary and superannuation and all other benefits, bonuses and allowances of any type (including non-cash benefits) and any guaranteed commission;

"Placement Fee" means the fee set out in clause 5.11 payable by the Client in the event that a Candidate or Temporary Candidate is employed by the Client, subject to clauses 5.10 and 5.11;

"Services" means the services provided by the Agency to the Client including locating, interviewing, screening, testing and pre-selecting Candidates and the provision of Temporary Candidates;

"Service Fees" means the fees payable by the Client to the Agency for the provision of Services, that are not included in the Labour Fees or Placement Fees, such as advertising fees;

"Temporary Candidate" means the on-hired individual employed by the Agency (directly or on a Contractor basis) who is provided to the Client on a temporary basis to fulfil the Client's particular workforce needs; and

"Terms" means these Terms and Conditions of Placement.

Permanent Placement means introduction of a job seeker to a prospective employer with a view of a permanent job.

Basis of the Agreement

Any instructions received by the Agency from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Agency constitutes acceptance of the Terms.

The Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms except in accordance with these Terms or with the written consent of the Agency.

None of the Agency's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agency in writing nor is the Agency bound by any such unauthorised statements.

An Agreement is accepted by the Agency when the Agency confirms its acceptance of a Service request from the Client, or provides the Client with Services.

The Agency may in its discretion refuse to accept any Service request from the Client.

The Candidate or Temporary Candidate is introduced or provided to the Client on the basis that:

the Client has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Candidate or Temporary Candidate and the work anticipated to be performed by him/her;

it is the Client's responsibility to provide the Agency with its specific and up to date requirements in relation to the desired qualifications and capabilities of the Candidate or Temporary Candidate.

Services

The Agency is at all times a service provider to the Client, and no relationship of agency, employment or partnership exists.

The Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Agency to the Client.

The Agency may license or sub-contract all or any part of its rights and obligations without the Client's consent.

Temporary Candidates

Minimum booking for Temporary Candidates is four hours. Cancellation of booking must be 24 hours in advance. Otherwise a fee of min 4 hours is payable at quoted rate for each assigned candidate.

If the Agency receives notice from the Client that the Client is dissatisfied with a Temporary Candidate, (provided by the Agency), within one (1) hour of that Candidate commencing, no charge will be made to the Client in respect of the Temporary Candidate.

Fee Structure

All relevant Award conditions apply to Temporary Candidates. Unless otherwise agreed in writing to the contrary, the Client must pay the Labour Fees in relation to the Temporary Candidate.

The Agency will charge the Client the Labour Fees applicable for the Temporary Candidate, inclusive of statutory charges, and levies, wages, shift allowances, overtime, penalty rates, sick leave, annual leave, long service leave, redundancy, Work Cover premiums and superannuation.

The Agency is responsible for PAYG tax deductions and the issuance of group certificates in respect of Temporary Candidates.

The Agency will pay the Temporary Candidate on the basis of the information contained on the approved time sheet and invoice the Client accordingly. The Client undertakes to have each weekly time sheet of each Temporary Candidate approved and endorsed by an authorised person employed by the Client. Client to forward time sheet to AWF within 24 hours of completion of shift.

No payment whatsoever (including but not limited to incentive and bonus payments) shall be paid by the Client to any Temporary Candidate.

Any authorised travel during work hours, and any allowances, meal money or other entitlements related to the Temporary Candidate, will be charged to the Client at the rate contained in the Award plus 15%.

All rates and conditions in relation to Temporary Candidates are subject to change without notice when affected by a variation in the Award or statutory employment costs and will be adjusted from the date designated for implementation of the variation.

The Labour Fee shall, subject to clause 5.7, be the Agency's quoted Labour Fee, which shall be binding upon the Agency provided that the Client shall accept the Agency's verbal or written quotation within twenty four (24) hours.

If clause 5.8 does not apply then the Labour Fees shall be as indicated on the invoices provided by the Agency to the Client in respect of the Services supplied.

If a Temporary Candidate is employed by the Client in any position, division or company within its group within two years from the date that the Temporary Candidate was last on-hired

to the Client the Placement Fee as set out in clause 5.11 will apply.

If a Candidate is employed by the Client in any position, division or company within its group within two years from the date that the Candidate was introduced to the Client by the Agency, the Client must pay a Placement Fee to the Agency regardless if the employment is on a part time of full time basis. The Placement fee is calculated as follows:

Hourly Rate x (38 hours x 52 weeks) x 12% OR based on the written quote. Commission only placements will attract a flat fee of \$5,500.00 plus GST.

The Agency will invoice the Client for the Services including for Service Fee and a Placement Fee immediately following the commencement of the Candidate with the Client.

The Service Fee will include any costs incurred by the Agency in advertising a position, which will be charged to the Client plus a 10% administration charge.

Where there is any change in the costs incurred by the Agency in relation to the Services, the Agency may vary the Service Fee to take account of any such change, by notifying the Client.

The Service Fee shall, subject to clause 5.14, be the Agency's quoted Service Fee, which shall be binding upon the Agency provided that the Client shall accept the Agency's verbal or written quotation within twenty four (24) hours.

If clause 5.15 does not apply, then the Service Fees shall be as indicated on the invoices provided by the Agency to the Client in respect of the Services supplied.

Payment

Invoices for Labour Fees represent wages already paid.

Subject to clauses 6.4, 6.5, 6.6 and 6.8, unless otherwise agreed in writing, all payments are due to the Agency in full within 7 days of the date of the Agency's invoice.

Time for payment is of the essence.

At the Agency's sole discretion a deposit or advance payment may be required. The deposit amount or advance payment will be stipulated at the time of the order of the Services and shall become immediately due and payable.

At the Agency's sole discretion, full payment may be due at the date of this Agreement.

The Agency may withhold delivery of the Services until the Client has paid for them, in which event payment shall be made before the delivery date.

At the Agency's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Agency's payment schedule.

Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (subject to being increased by the amount of any processing fees), or by any other method as agreed to between the Client and the Agency.

Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

The amount payable from the Client to the Agency shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Agency.

The Client shall not set off against the amounts payable to the Agency, amounts due from the Agency.

Delivery Of Services

Any period or date for supply of the Services is an estimate only and not a contractual commitment.

If the Agency cannot supply the Services by any estimated date, it will provide the Services within a reasonable time.

Guarantee

Subject to the conditions of Guarantee set out in clause 8.2 the Agency Guarantees that if any Candidate provided by the Agency leaves the employ of the Client within three (3) months of permanent placement or one (1) hour of temporary placement (time being of the essence) then the Agency undertakes to provide a replacement candidate for the position at no extra cost to the Client.

The conditions applicable to the Guarantee given by clause 8.1

are:

Cessation of employment is not due to restructuring of the job description, or redundancy, or redeployment caused by the Client.

The Client is to advise the Agency in writing within either seven (7) days for permanent placement or one (1) hour for temporary placement (time being of the essence) of termination that the Client wishes to engage the replacement process;

The guarantee only applies to the original Candidate or Temporary Candidate, therefore no guarantee is made on any successful replacement;

The Agency shall not be liable to compensate the Client for any delay in replacing the Candidate under the guarantee;

The guarantee will not apply to an employee who commenced with the Client after being placed with the Client as a Temporary Candidate;

The guarantee only applies if the Client has paid all moneys due to the Agency;

The guarantee does not cover out of pocket expenses in obtaining a replacement and such costs, including advertising costs, will be charged to the Client;

The guarantee does not apply if the job description has changed since the Candidate or Temporary Candidate being replaced commenced.

Risk and Indemnity

The Client assumes the risk of all loss, damage or injury to persons or property of the Client, the Candidate or Temporary Candidate or any third parties ("Persons or Property") howsoever caused, arising from or in connection with the provision of Services.

The Agency is not liable for any loss of, or damage to the Persons or Property arising on or from the Client's worksite.

The Client must indemnify and keep the Agency indemnified in respect of all claims, demands, actions, suits or other proceedings brought by any person whatsoever, for any damage, loss, injury or death whatsoever, arising out of or in connection with the tasks undertaken by the Candidate or Temporary Candidate, whether arising under statute or common law.

If the Client is hiring a Temporary Candidate, the Client must obtain and maintain for the duration of the placement:

public liability insurance;

workers compensation injury insurance; and

professional indemnity insurance; (if applicable)

with limits reasonably acceptable to the Agency in light of the nature of the work the Temporary Candidate will be undertaking. The Client must produce written evidence of those insurances to the Agency on demand.

Safety

From the time the Temporary Candidate reports to the Client for their duties, and for the duration of the placement, the Temporary Candidate is under the practical day-to-day care, control, supervision and direction of the Client. The Client is responsible for all acts, errors and omissions of the Temporary Candidate be they wilful, negligent or otherwise for the duration of the placement.

The Client is responsible for:

training, consulting and inducting the Candidate or Temporary Candidate to the Client's worksite at the commencement of the placement;

the adequate training and supervision of the Candidate's or Temporary Candidate's use of workplace procedures, tools, equipment, machinery, motor vehicles and forklifts;

immediately notifying the Agency of any planned variation to the duties or work practices of the Candidate or Temporary Candidate.

The Client must:

provide and maintain a working environment that is safe and without risk to health;

strictly comply at all times with all relevant health and safety and industrial legislation, standards and regulations ("Standards");

allow an authorised Agency representative to attend at the Client's premises and conduct occupational health and safety inspection prior to commencement of the Candidate or Temporary Candidate, and in respect of Temporary Candidates, at regular intervals throughout the placement; bear the cost of any liability for death, injury, damage or loss to any person or property caused by a breach of the Standards, and must indemnify the Agency, its directors, officers, servants, agents and insurers against all liability resulting from a breach of the Standards; immediately report to the Agency any injury sustained by or to the Candidate or Temporary Candidate; report any notifiable incident to both Work Safe Victoria and the Agency within 48 hours of such an incident occurring.

Default & Consequences Of Default

Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agency from and against all the Agency's costs and disbursements including on a solicitor and own Client basis and in addition all of the Agency's nominees costs of collection.

Without prejudice to any other accrued or contingent rights or remedies the Agency may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agency may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agency will not be liable to the Client for any loss or damage the Client suffers because the Agency exercised its rights under this clause.

If any account remains unpaid at the end of 28 days after supply of the Services the following shall apply: An immediate amount of the greater of \$50.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

In the event that:

any money payable to the Agency becomes overdue, or in the Agency's opinion the Client will be unable to meet its payments as they fall due; or
the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;

then without prejudice to the Agency's other accrued and contingent rights

the Agency shall be entitled to cancel all or any part of any uncompleted orders; and

all amounts owing to the Agency shall, whether or not due for payment, immediately become payable.

Confidentiality

All information provided to the Client by the Agency, whether written or verbal, is confidential and must not be disclosed to any party without the Agency's written consent.

The Candidates' or Temporary Candidates' particulars, including contact details are strictly confidential. The Client must not contact the Candidate, Temporary Candidate or current employer of the Candidate without the Agency's written consent.

All information regarding Temporary Candidates who are no longer placed with the Client, or unsuccessful Candidates must be disposed of.

Privacy

The Agency is committed to complying with the Privacy Act

1988 as amended. The Agency requires that the Client comply with the National Privacy Principles in connection with any personal information supplied to it by the Agency in connection with the Agreement.

Cancellation

If the Agency is unable to provide the Services, then the Agency may cancel the Client's request for Services (even if already accepted) by written notice.

The Agency is not liable for any loss or damage whatever arising from such cancellation.

No purported cancellation of the Agreement by the Client or any part thereof is binding on the Agency once the Client's request for Services has been accepted.

Agency Disclaimer

The Agency endeavours to provide accurate background on Candidates' and Temporary Candidates' qualifications and experience. However these details are based on information made available by Candidates, Temporary Candidates and referees. Therefore no responsibility can be accepted by the Agency for errors, omissions, or incorrect conclusions.

Whilst the Agency makes every effort to submit Candidates that are suitable for client needs, the Client must satisfy itself as to whether the Candidate or Temporary Candidate is suitable for the Client's organisation.

No liability will be accepted for any loss, or damage, or other costs irrespective of how they are caused which a Client may suffer, or for which a Client may become liable arising out of, or in connection with the introduction of a Candidate or placement of a Temporary Candidate to a Client company, including where a Candidate or Temporary Candidate is negligent, dishonest or engages in misconduct.

Except as these Terms specifically state, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, suitability, fitness, description or performance of the Services or any contractual remedy for their failure.

If the Client is a consumer nothing in these Terms restricts, limits or modifies the Client's rights or remedies against the Agency for failure of a statutory guarantee under the ACL.

The Agency is not liable for:

any loss or damage to persons or property, howsoever caused, arising from the supply of the Candidate or Temporary Candidate, including death or injury to any person and loss or damage to any property, plant, equipment, tools, fixtures, fittings or materials; or

any direct, indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, loss of sales, loss of profits, business or goodwill, or any liability to any other party,

except to the extent of liability imposed under the ACL.

Nothing in this Agreement is to be interpreted as excluding, restricting or modifying the application of applicable State or Federal legislation, which cannot be so excluded, restricted or modified.

Force Majeure

The Agency is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control, including without limitation, industrial disputes, strikes, lockouts, accident, breakdown, fires, storms, import or export restrictions, acts of God, acts or threats of terrorism or war.

If an event of force majeure occurs, the Agency may suspend or terminate the Agreement by written notice to the Client.

Security And Charge

The Client and the Directors/Partners referred to in the Application for Credit Account hereby charge all their right, title and interest in the property or properties referred to in the

Application for Credit Account under Details of Partners/Directors and also any property or properties that they own currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of the Agency, with the due and punctual observance and performance of all of the obligations of the Client. The Client indemnifies the Agency against all expenses and legal costs (on a solicitor/own client basis) for preparing, lodging and removing any caveat.

The Client and the individuals referred to in the Application for Credit Account hereby acknowledge that the Agency, may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under this clause. Such registration of a caveat by the Agency over the Client's property or properties must not be challenged by the Client in any way whatsoever, and the Client agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Client has

paid all monies owing by it to the Agency as claimed from time to time.

General

The law of Victoria from time to time governs the Terms

If a term of this Agreement is unenforceable, it is to be read down to be enforceable. If it cannot be read down, it shall be severed from this Agreement without affecting the enforceability of the remaining Terms.

Notices must be in writing and delivered to the last known address of the addressee. Notices are deemed to be received: if sent by prepaid mail - upon posting; if sent by fax or email - upon confirmation of successful transmission.

The Agency reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Agency notifies the Client of such change.