

Client Terms and Conditions of Business

The WorkPac System



1. INTERPRETATION

Unless the contrary intention appears:

Agreement: means these Standard Terms & Conditions of Business (as amended from time to time pursuant to clause 11) including any special conditions in the Job Order Confirmation.

Cancellation Fee: means the fee which is payable by the Client in the circumstances set out in, and calculated in accordance with, clause 3.4.

Candidate: means the Permanent Candidates, the Temporary Candidates and any other party referred, introduced and or placed by WorkPac with the Client for an engagement.

Client: means the Client of WorkPac (you) or its representative.

Contract: means every acceptance of Services by the Client including but not limited to each Job Order Confirmation or other contract between WorkPac and the Client.

Event of Default: means any of the following events:

- (i) the Client has committed a material breach of a material term of this Agreement;
- (ii) if the Client is a company:
 - (a) an order is made or a resolution is passed for winding up the Client;
 - (b) a receiver, liquidator or an administrator is appointed;
 - (c) the Client goes into liquidation or enters into an arrangement with its creditors;
 - (d) the Client stops payment or is unable to pay its debts;
- (iii) if the Client is a natural person:
 - (a) the Client becomes bankrupt or enters administration;
 - (b) the Client dies or becomes incapable of managing its affairs;
 - (c) the Client ceases or threatens to cease carrying on business.

GST: means any goods and services tax which applies to the provision of the Services under any legislation.

Job Order Confirmation: means the documentation setting out the Client's instructions and requirements regarding Services and provided to the Client by WorkPac.

Permanent Candidate: means a candidate who is offered or accepts a permanent position of employment with the Client.

Services: includes the resting, introduction and provision of Candidates to the Client and all associated services.

Service Fee: means the fee payable by the Client to WorkPac for the Services calculated in accordance with clause 3.5.

Temporary Candidates: means a candidate employed by WorkPac or a related entity who is offered or accepts a temporary assignment with the Client.

WorkPac: means WorkPac Pty Ltd ACN 111 076 012, unless otherwise agreed.

2. INCORPORATION OF TERMS

- 2.1 The terms of this Agreement apply to every Contract entered into after the date of this Agreement.

3. SERVICE FEES

- 3.1 The Service Fees will be set out in the Job Order Confirmation and/or WorkPac's schedule of fees that WorkPac provides to the Client.
- 3.2 **Liability to Pay:** WorkPac and the Client will agree when the Service Fees become payable. This will be set out in the Job Order Confirmation and/or Contract.
- 3.3 Despite anything else in this Agreement, Service Fees will be payable where:
 - 3.3.1 a Candidate obtains employment with the Client or a third party to whom the Client refers the Candidate within twelve (12) months of:
 - (a) WorkPac providing the Services; or
 - (b) the expiry or termination of that Candidate's last engagement with the Client which resulted from the provision of the Services.
 - 3.3.2 the Client accepts a particular Candidate, and in such case, the Client agrees that the engagement is governed by the Contract under which those Services were originally provided to the Client except that the Service Fee payable will be at WorkPac's current rates set out in the current schedule of fees.
- 3.4 **Cancellation Fee:**
 - 3.4.1 **Permanent Candidates:** If WorkPac has performed the Services but the Client elects not to engage a Permanent Candidate for any reason, WorkPac may charge the Client a Cancellation Fee equal to one third of the Service Fee that

would have been payable by the Client if the Permanent Candidate had been engaged.

- 3.4.2 **Temporary Candidates:** If WorkPac has performed the Services and the Client accepts a Temporary Candidate but the Client cancels a booked shift less than two (2) hours before that booked shift is due to commence, then the Client must pay a Cancellation Fee calculated by multiplying the Service Fee hourly rate plus GST by 2 (i.e. \$45.00 per hour x 2 = \$90.00).

- 3.5 **Calculation of Service Fees:** Unless otherwise agreed in writing, the Service Fees will be:

- 3.5.1 **For Permanent Candidates:** a percentage (as specified in the Job Order Confirmation) of the total annual salary package which the Client agrees to pay the Permanent Candidate including superannuation and all non-cash benefits; and

- 3.5.2 **Temporary Candidates:** charged on a 'per-hour' basis, for a minimum of four (4) hours per shift and will include overtime rates (as specified in the Job Order Confirmation) which must be paid to Temporary Candidates.

- 3.6 **Temporary Candidates – Service Fees (Miscellaneous)**

- 3.6.1 If WorkPac is required by law to pay a Temporary Candidate an increased rate, the Services Fees will automatically increase to reflect the increased rate from the date the increased rate comes into effect (including backdating) and the Client must pay any shortfall in Service Fees already invoiced. WorkPac will advise the Client of the increased rate in writing as soon as reasonably practicable after becoming aware of it.

- 3.6.2 If the Client converts a Temporary Candidate to a Permanent Candidate, the Client must pay further Service Fees in accordance with clause 3.5.1 and failing agreement, in accordance with WorkPac's current schedule of fees.

- 3.7 **Invoices:** WorkPac will issue tax invoices to the Client:

- 3.7.1 **For Permanent Candidates,** at agreed intervals as set out in the Job Order Confirmation; and

- 3.7.2 **For Temporary Candidates,** on a weekly basis.

- 3.8 **GST:** All tax invoices will include an additional amount for GST.

- 3.9 **Invoice Period:** The Client must pay each tax invoice within fourteen (14) days from the invoice date. WorkPac will charge the Client default interest on amounts not paid within fourteen (14) days at the unsecured business overdraft rate charged by Westpac Banking Corporation plus 2% from the date the invoice is due until paid in full.

- 3.10 **Invoice Queries:** The Client must raise all queries regarding invoices with WorkPac within 14 days of the invoice date, failing which, the parties agree that the invoice accurately reflects the amounts due. Each party agrees to provide all information and co-operation to enable queries on the invoices to be resolved promptly.

- 3.11 **Credit:** WorkPac at its discretion may extend trade credit to the Client on terms satisfactory to WorkPac. WorkPac may at any time vary or cease extending any credit granted to the Client, having given such written notice to the Client as is reasonable in the circumstances, or may require security or personal guarantees for any credit provided.

- 3.12 **Merchant Fees:** The Client must pay any applicable merchant fees reasonably incurred by WorkPac for payment methods used by the Client and any duty and other government charge relating to the establishment or operation of the Client's account.

4. ENGAGEMENTS

4.1 General

- 4.1.1 If the Client requires the services of a Candidate who has previously worked for the Client or has been introduced to the Client through WorkPac, the Client must request their services through WorkPac and must not contact the Candidate directly.

- 4.1.2 The Client must not refer any Candidate to any third party. All referrals must be directed to and through WorkPac.

- 4.2 **Permanent Candidates:** The Client is solely responsible for payment of wages, superannuation, income taxation, GST and any other obligation incidental to the employment of Permanent Candidates.

4.3 Temporary Candidates:

- 4.3.1 If the Client wishes to negotiate a variation to the status of a Temporary Candidate currently working with the Client, the Client must contact WorkPac and must not negotiate directly with the Candidate.

- 4.3.2 WorkPac is solely responsible for payment of wages, superannuation, income taxation, GST, any other obligation incidental to the services provided by the Temporary Candidates.

- 4.3.3 If the Client wishes to change the Temporary Candidates' original duties, the Client, before the work is undertaken, must notify WorkPac and such change will be conditional upon WorkPac verifying with the Temporary Candidate, and notifying the Client in writing, that the

Temporary Candidate is qualified, competent and willing to perform the changed duties.

4.3.4 WorkPac's invoices for Service Fees will be based on timesheets completed by Temporary Candidates including overtime rates payable for overtime worked by Temporary Candidates. The Client must request Temporary Candidates to forward copies of their timesheets (detailing exact hours worked) to WorkPac weekly. Where no timesheet is provided, the Client must provide to WorkPac in writing the Temporary Candidates' hours.

4.3.5 The Client must sign Temporary Candidates' timesheets which will be confirmation by the Client that the hours and time allocations shown on those timesheets are correct and Service Fees will be invoiced based on the timesheets. The Client warrants to WorkPac that the timesheet signatory has authority to bind the Client. The Client must process and sign Temporary Candidates' timesheets on the morning of the first workday following the last day of the pay week. If no signed timesheet is received by WorkPac, WorkPac will contact the Client in writing setting out the hours which the Temporary Candidate worked. If the Client does not respond within 2 business days, the Client will be deemed to have accepted those hours, unless the Client raises a query in relation to the hours worked.

4.3.6 Subject to the requirement to pay Service Fees and Cancellation Fees, either party may terminate the engagement of a Temporary Candidate by giving two (2) hours' written notice to the other party. WorkPac will give Temporary Candidates notice of termination upon receipt of a notice from the Client.

4.4 Where a Temporary Candidate is required to travel, the Client must pay all travel expenses.

5. OCCUPATIONAL HEALTH AND SAFETY

5.1 **General:** The Client must provide a safe work environment for Candidates in accordance with all applicable laws, regulations and requirements of applicable authorities.

5.2 **Permanent Candidates:** The Client has a duty of care and is solely responsible for ensuring that Permanent Candidates work in a healthy and safe environment.

5.3 Temporary Candidates

5.3.1 The Client and WorkPac jointly have a duty of care and obligations to Temporary Candidates regarding occupational health and safety (OH&S). WorkPac has its own OH&S procedures, which is provided to the Client upon request in accordance with clause 5.3.4 below.

5.3.2 The Client must provide and ensure that Temporary Candidates attend an induction/job familiarisation prior to Temporary Candidates commencing work for the Client. The Client must provide WorkPac with records verifying that site-specific and/or job specific inductions have been provided and attended by Temporary Candidates.

5.3.3 If there are differences between the Client's OH&S policies and WorkPac's OH&S policies, WorkPac and the Client must consult with each other in good faith to resolve them to remove any unacceptable risks to Temporary Candidates.

5.3.4 WorkPac and the Client must use best endeavours to cause Temporary Candidates to comply with their OH&S policies and to assist each other in doing so, including providing full documentation of each other's policies when requested. The Client must allow WorkPac to enter the Client's premises during ordinary business hours and upon reasonable notice to conduct inspections, incident investigations and audits relating to the OH&S of the Temporary Candidates.

5.3.5 If a Temporary Candidate is injured, the Client:

(a) must notify WorkPac as soon as practicable upon becoming aware of the incident; and

(b) has a joint responsibility with WorkPac for rehabilitating the injured Temp Candidate. The Client agrees to provide suitable duties for the rehabilitating Temporary Candidate to perform under the treating medical practitioner's advice.

5.3.6 If an injured Temporary Candidate is unable to perform the duties set out in the Job Order Confirmation, the Service Fees will be reduced to the extent to which the Temporary Candidate cannot perform its duties.

5.3.7 If the Client requests a Temporary Candidate to supply its own equipment, the Client must inspect it and ensure the suitability and safety of such equipment.

5.3.8 The provision of personal protective equipment is the responsibility of the Client.

5.3.9 The Client must give WorkPac prior notice if the Client requires a Temporary Candidate to:

(a) work in excess of 12 hours per shift,

(b) work more than 13 continuous shifts; or

(c) have a rest period of less than 10 hours between shifts.

5.3.10 The Client must provide WorkPac with all information necessary for job safety analyses to be carried out to determine the level of risk which Temporary Candidates could be exposed as a result of the Client's requirements set out above which will include:

(a) the level of supervision the Temporary Candidate will receive during the extended work hours;

(b) special conditions that will apply to eliminate the Temporary Candidate's fatigue and the possibility of an incident; and

(c) appropriate measures to be implemented to ensure the health and safety of the Temporary Candidate.

5.3.11 WorkPac may refuse to supply Temporary Candidates to the Client where, in WorkPac's reasonable opinion, the circumstances pose an unacceptable OH&S risk to the Temporary Candidates.

6. SUSPENSION AND TERMINATION

6.1 WorkPac, may cease or suspend supplying Services to the Client.

6.2 If an Event of Default occurs, WorkPac may provide written notice to the Client notifying them of the Event of Default and where such Event of Default is capable of remedy, require the Client to remedy such Event of Default within a reasonable period stated in the notice. Where the Client fails to remedy such Event of Default (where the Event of Default is capable of remedy), then without prejudice to its other rights, WorkPac may call up moneys owed to it by the Client, cease providing any Services and recover from the Client any loss suffered by WorkPac based on breach of contract by the Client.

7. WORKPAC'S OBLIGATIONS

7.1 WorkPac must:

7.1.1 Sight and hold a copy of the qualifications that a Candidate must hold to undertake the duties;

7.1.2 Obtain two (2) independent favourable references for Candidates from previous employers regarding work performed by the Candidate which is similar in nature to the work for which the Client requires the Candidate to perform;

7.1.3 Conduct, and submit the results of, all skill and psychometric testing of the Candidates as requested by the Client as described in the Job Order Confirmation;

7.1.4 Interview the Candidates; and

7.1.5 In respect of Temporary Candidates only, provide Temporary Candidates with a basic safety induction.

7.2 Where the Client instructs WorkPac to forgo any part of its obligations under clause 7.1, WorkPac will record those instructions in WorkPac's computer system and will rely on that as evidence that WorkPac was not required to perform the relevant obligation/s.

7.3 WorkPac warrants that it has, and will maintain, all forms of insurance which WorkPac is required by law to maintain in relation to the supply of Candidates.

8. OBLIGATIONS

8.1 Each party must:

8.1.1 comply with the terms of this Agreement;

8.1.2 always act in good faith; and

8.1.3 comply with all laws, regulations and rules of applicable authorities applicable to it.

8.2 The Client must have and maintain, and warrants that it has and will maintain, liability insurance which provides cover for all activities carried out by the Client, including against liability for work carried out by all Candidates to the fullest extent possible.

9. ACKNOWLEDGEMENTS & LIMITATION OF LIABILITY

9.1 The Client acknowledges that WorkPac:

9.1.1 is not responsible for and does not provide any form of insurance whatsoever for or on behalf of the Client or Permanent Candidates;

9.1.2 is not performing any of the Candidates' duties or obligations to the Client;

9.1.3 duties are to provide Candidates who reasonably appear to be qualified to perform the work described in the relevant Job Order Confirmation based on WorkPac's investigations under clause 7;

9.1.4 will facilitate the introduction and engagement of Candidates who have provided reasonable evidence to WorkPac that they are qualified to perform the work described in the relevant Job Order Confirmation;

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- 9.1.5 is not responsible or liable for any misinformation that is received from a Candidate, a Candidate's referee or any other source which is subsequently communicated to the Client;
- 9.1.6 does not guarantee the quality of performance of Permanent Candidates to any extent;
- 9.1.7 is not liable to the Client under any circumstances in respect of any damage, loss, claim, injury or negligence of whatsoever nature or kind, which is caused by or contributed to by the acts or omissions of any Candidate, except to the extent of WorkPac's fraud, negligence or wilful misconduct or the fraud, negligence or wilful misconduct of its employees, contractors or agents; and
- 9.1.8 is not a registered migration agent and does not offer any migration, work permit or residency related advice either to the Client or Candidates.

- 9.2 Despite every reasonable effort and care being made and taken by WorkPac:
 - 9.2.1 to ensure the suitability of Candidates, the Client must satisfy itself that Candidates are suitable for the work the Client required to be performed. The Client relies on its own assessment in this regard;
 - 9.2.2 when verifying information provided by Candidates and collecting references, WorkPac does not guarantee references or information concerning Candidates' skills, qualifications, experience or integrity.

10. REPLACEMENT GUARANTEE

- 10.1 **Permanent Candidates:** If a Permanent Candidate commences working for the Client but the Client or the Permanent Candidate terminates the engagement within twelve (12) weeks of the date the Permanent Candidate commenced working for the Client, clause 10.2 applies.
- 10.2 If this clause applies, WorkPac agrees to:
 - 10.2.1 provide further Services to the Client to attempt to secure a replacement Candidate for a position requiring the same or substantially similar qualifications as the set out in the original Job Order Confirmation;
 - 10.2.2 apply any monies paid by the Client to WorkPac (for Services Fees for securing the original Candidate) as a service credit in favour of the Client for up to 6 months from the original Candidate's commencement date and at expiry of the 6 months, WorkPac is entitled to such money; and
 - 10.2.3 apply the service credit toward Service Fees for securing a replacement Candidate.
- 10.3 If the Service Fees payable for securing the replacement Candidate (less the service credit) are greater than the Service Fees which were payable for securing the original Candidate, WorkPac may require the Client to pay an additional amount to make up the difference.
- 10.4 Despite anything to the contrary in this clause, clause 10.2 does not apply where:
 - 10.4.1 the Client does not pay any invoice on time; or
 - 10.4.2 the Candidate's engagement is ended due to:
 - (a) retrenchment;
 - (b) unwarranted dismissal; or
 - (c) if the Client materially changes the conditions of employment.
- 10.5 If WorkPac has complied with its obligations under clause 10.2, where a replacement Candidate is not secured by the Client within 6 months of the original Candidate's commencement date, WorkPac is entitled to all monies held pursuant to clause 10.2.2.
- 10.6 **Temporary Candidates:** If the Client is not satisfied with a Temporary Candidate within the Temporary Candidates' first 4 hours of its first shift and notifies WorkPac in writing within that time, the Client will be not charged for the hours worked within those 4 hours and a replacement Temporary Candidate will be provided.
- 10.7 The Client will be liable to pay all direct costs reasonably incurred by WorkPac in complying with this clause 10 including advertising.
- 10.8 This replacement guarantee does not apply to replacement Candidates.

11. VARIATIONS

- 11.1 No variation of this document will be valid or binding unless recorded in writing and executed by both parties.

12. INDEMNITIES

- 12.1 The Client indemnifies WorkPac against all loss, damage, claims of any kind suffered by WorkPac resulting or arising from the Client's failure to comply with any of its obligations under this Agreement, except to the

extent of WorkPac's fraud, negligence or wilful misconduct or the fraud, negligence or wilful misconduct of its employees, officers, contractors, agents or appointed receivers.

- 12.2 WorkPac indemnifies the Client against the loss of a Candidate but only to the extent set out in clause 10.

13. GENERAL CONDITIONS

- 13.1 The Client must pay to WorkPac any reasonable costs, charges and expenses incurred by WorkPac in connection with the entry into or enforcement of this Agreement. WorkPac will not be liable for any transactions involving the Client's credit account, including fraudulent use of that account by the Client or its employees, except to the extent of WorkPac's fraud, negligence or wilful misconduct or the fraud, negligence or wilful misconduct of its employees, officers, contractors, agents or appointed receivers.
- 13.2 If the Client enters into this Agreement as a trustee, this Agreement binds the Client personally and as trustee and the Client will make the assets of the trust available to meet payment of its account.
- 13.3 This Agreement is governed by the laws of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Brisbane Central Courts of Queensland.
- 13.4 Any of the Client's usual or standard terms of trade do not apply to this Agreement, any Job Order Confirmation or any Contract.
- 13.5 All WorkPac's intellectual property and details about Candidates are confidential. Unless required by law, the Client must keep all such intellectual property and details confidential at all times.
- 13.6 If the Client:
 - 13.6.1 undertakes a Candidate interview;
 - 13.6.2 instructs WorkPac to issue a Job Order Confirmation;
 - 13.6.3 makes any payment for Service Fees; or
 - 13.6.4 accepts or engages a Candidate, following receipt of this Agreement, the Client will be deemed to have agreed to the terms of this Agreement.