



TERMS OF BUSINESS CONDITIONS

1. Interpretation

In the interpretation of these terms of business conditions:

“Covenants” by more than one person shall be deemed to have been given jointly and severally.

“Customer” means the customer, and the customers of the customer, and in the case of a partnership, each partner and his heirs, successors and personal representatives and in the case of a corporation, the customer and each director and guarantor and its and their successors, personal representatives and heirs as the case may be.

“Flexi Staff” means FLEXI STAFF PTY LTD (ACN 009 440 288), its successors, assigns, related companies (within the meaning of the Corporations Act), sub-contractors, employees and agents. One gender includes the other gender.

2. Agreement

- (a) The terms of business conditions of this agreement constitute the contractual basis for the granting of credit by Flexi Staff to the customer.
- (b) The parties agree that the customer is not entitled to any credit facilities until the customer receives a copy of this agreement executed by FlexiStaff
- (c) The signatories to this agreement warrant that:
 - (i) they are duly authorised as directors, partners or agents as the case may be, to apply for credit on the customer’s behalf and to execute this agreement for and on behalf to the customer; and
 - (ii) the information supplied by the customer is, for the purposes of obtaining credit, true and accurate in all respects.

3. Minimum Period Of Hire

3.1 Relevant Industrial Instruments:

The customer is obliged to advise Flexi Staff of any Award, Australian Workplace Agreement or other industrial instrument that is applicable to its workforce.

3.2 Minimum Charge Applicable to Customers:

The minimum charge applicable for the hire of a temporary staff member is four (4) hours. The chargeable period commences when the temporary staff member reports to the customer for duty or at another time mutually agreed by the parties.

4. Rate Of Charge

The hourly rate charged by Flexi Staff is fully inclusive of workers compensation, public liability insurance, PAYE tax, payroll tax, annual leave, sick leave and superannuation. All administrative costs including payroll charges, pay slips and group certificates are also included.

5. Allowances

Any relevant allowances or entitlements that may be applicable or incurred will be charged to the customer on an “at cost” basis.



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6. Operators Of Mobile Plant And Vehicles

- 6.1 Customer's Licenses:
Temporary operators/drivers are supplied to the customer on the proviso the customer holds the relevant operators licence under the applicable State or Commonwealth legislation in force at the time of the employee's placement. The customer must at all times adhere to its statutory obligations with respect to the relevant licenses and permits.
- 6.2 Enquiries as to Licenses:
Flexi Staff will conduct all reasonable and necessary checks of the operator/driver, including, but not limited to; references, licences held, relevant certification and permits.
- 6.3 Customer's Obligations Regarding Safety and Insurance:
The customer is responsible for keeping adequate records of the driver's hours and is directly responsible for the maintenance and safety of vehicles, adherence with occupational safety and health regulations (in particular, fatigue management practices) and compliance with road traffic regulations. The customer's insurance will include, but is not be limited to, comprehensive cover for vehicles and their contents. Flexi Staff reserves the right to view the customer's insurance policies.

7. Guarantee Of Competence

- 7.1 Notification of Individual's Unsuitability:
Customers of Flexi Staff are not liable for the cost of the hire of an individual from Flexi Staff, provided that, within the first four (4) hours of the assignment the customer notifies Flexi Staff that the temporary staff member is not competent to complete the required duties.
- 7.2 Waiver of Costs:
If Flexi Staff also hold the view the individual is not competent to complete the required duties, Flexi Staff shall not charge the customer for the placement, however, it reserves the right to provide the customer with a suitable replacement as soon as reasonably practicable.

8. Permanent Placements

A customer accepts these terms and conditions on execution of this document.

- 8.1 Fee Calculation:
A fee is payable to Flexi Staff for a candidate introduced to a customer who accepts an engagement with the customer. The fee will be calculated on the candidate's gross annual salary for the first twelve (12) months of placement.
The fee calculation is applicable for full time, part time and set contract period placements and is based on salary which includes; wages, superannuation, bonuses, benefits (including motor vehicle allowances) and any other payments made to the candidate in relation to the engagement.

Permanent Fees

| | |
|-----------------------|-----|
| Up to \$50,000 | 12% |
| 50,000 to \$85,000 | 15% |
| \$85,001 to \$100,000 | 16% |

The above mentioned rates do not apply to the customers with the preferred supplier agreement.

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Flexi Staff must be notified immediately once the customer engages a candidate and the parties must confirm the agreed salary package including; wages, superannuation, bonuses, and benefits (including motor vehicle allowances) and any other payments of any kind.

8.2 Suitability of Candidate:

Flexi Staff will endeavour to match the candidate to the customer's specific requirements. It however remains the responsibility of the customer to satisfy themselves of the suitability of the candidate to the relevant position. Flexi Staff and its officers accept liability for the accuracy of any information supplied by the candidates in relation to employment history, qualifications or personal circumstances. Flexi Staff does not guarantee that a candidate will be available or accept any engagement, assignment or contract offered by a customer. Flexi Staff supplies candidates to customers on the basis that obligations of confidence will be maintained by the individual.

8.3 Permanent Placement Fees:

If a customer transfers or introduces a candidate to another person, firm or organisation and the candidate is subsequently employed in a temporary, permanent or contract position, Flexi Staff shall invoice the customer a "permanent placement fee" in accordance with the fee structure above. The customer will not employ or seek to employ Flexi Staff employees.

9. Replacement Guarantee

Flexi Staff has a replacement guarantee period of three (3) months from the commencement of the placement of the candidate, if the candidate is terminated by the customer. This however does not include situations concerning redundancy or a change to the original job specifications provided to Flexi Staff. Flexi Staff will replace the individual without charge (except for advertising and out of pocket expenses) on the condition that:

- the customer's account for fees incurred has been paid in full within the payment terms of this contract;
- Flexi Staff is the sole recruitment company engaged by the customer; and Flexi Staff is provided documentation which satisfies it that the initial candidate is unsuitable for the position and the individual was dismissed on these grounds. A copy of the letter of termination is to be provided to Flexi Staff.

10. General Conditions

11. Permanent Placement Fee For Temporary Personnel

If one of the following situations occurs, a permanent placement fee shall be payable to Flexi Staff based on the above scale of fees:

- should a temporary employee be offered full time employment with the customer prior to the completion of a continuous twelve (12) week (at 38 hours per week) labour hire period or the completion of an agreed contract period (but not less than twelve (12) weeks (at 38 hours per week); or
- the direct reemployment of an employee within six (6) months of the candidate being introduced to the customer by Flexi Staff on a temporary, permanent or contract basis; or
- should the customer change its supplier of temporary labour and a Flexi Staff employee is offered and accepts a position with the new supplier.

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12. Occupational Safety & Health

Customers of Flexi Staff must adhere to their obligations under the Occupational Safety and Health Act (1984). It is the customer's responsibility to ensure the provision of:

- a safe workplace and work system;
- adequate supervision of staff and job specific training;
- a thorough induction to the site/workplace and equipment including the provision of a safety policy. The candidate must further be made aware of the customer's safety procedures and systems, amenities and evacuation procedures; and
- identification, assessment and control of risks to safety and health.

To assist both organisations in meeting the statutory requirements of the Occupational Safety and Health Act (1984), the customer agrees to the following:

- to notify Flexi Staff of any changes to the workplace or tasks to be performed by a Flexi Staff employee;
- to not permit a Flexi Staff employee to undertake work on site or on equipment considered unsafe, or in circumstances where the Flexi

Staff employee does not have the requisite certification or training;

- to immediately notify Flexi Staff of any injuries suffered by any Flexi Staff employee;
- to bear all responsibility for costs or penalties incurred because of a breach of the Occupational Safety and Health Act (1984) resulting from the customer's negligence; and
- to ensure personal protective equipment ("PPE") is used by Flexi Staff employees when required.

Flexi Staff will ensure it meets its obligations and undertakes to:

- ensure temporary staff present to work wearing appropriate clothing and footwear which adheres to dress standards and safety requirements;
- issue and instruct Flexi Staff employees on the use of appropriate PPE; and
- conduct regular monitoring visits to the site to discuss performance, occupational safety and health compliance and duties undertaken by Flexi Staff employees.

Flexi Staff, as the employer of the temporary staff, has the right to consult with the customer and temporary staff in relation to occupational safety and health issues performed by a Flexi Staff employee;

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13. Advertising Expenses

If Flexi Staff advertises exclusively for a specific position on behalf of a customer then the following provisions apply:

- display or lineage advertising will be discussed and agreed to by the customer prior to the advertisement being placed; and
- an invoice will be issued to the customer on an "at cost basis."

14. Disclaimer Of Liability

14.1 Care, Control and Supervision:

The customer acknowledges that Flexi Staff is the supplier of personnel at the customer's request, to perform the work required. Flexi Staff employees are under the care, control and supervision of the customer for the duration of the assignment.

14.2 Liability for Loss or Damage:

Whilst care is taken to ensure that staff supplied by Flexi Staff to customers are suitable for the assignment, Flexi Staff is not liable for any loss or damage arising from any acts, errors or admission of the temporary staff person whether such act, error or admission is lawful, negligent or otherwise.

15. Goods & Services Tax

Flexi Staff is registered with an Australian Business Number of 83 009 440 288.

An additional ten (10) % goods & services tax will apply to all rates and all other associated costs.

16. PAYMENT

- (a) The customer shall make payment in full of all invoices within 7 days of receipt.
- (b) All money payable by the customer under this agreement shall be paid free and clear of any and all deductions, set-offs or counter-claims.
- (c) If the customer defaults in the payment of any account, then:
 - (i) all monies due to Flexi Staff shall immediately become due and payable and shall be paid by the customer immediately on Flexi Staff 's demand;
 - (ii) Flexi Staff is entitled to charge interest on the overdue amount, at the rate of 10%, or 2% above Flexi Staff 's Bank's overdraft interest rate, whichever is the greater, from the due date for payment to the date of actual payment;
 - (iii) any expenses, costs or disbursements incurred by Flexi Staff in recovering any outstanding monies due to Flexi Staff by the customer under this Agreement, or enforcing any of the terms and conditions that are to be performed by the customer under this Agreement, or undertaking or exercising any of the rights due to Flexi Staff under this Agreement or at law, including but not limited to any debt collection agency fees and solicitors' costs calculated on a solicitor and client basis, shall be paid by the customer and or alternatively be recoverable by way of liquidated damages notwithstanding Section 25 of the Magistrates Court (Civil Proceedings) Act 2004 (WA);

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- (iv) terminate, without notice, any credit arrangement with the customer; and
- (v) enter any premises where the goods may be stored from time to time (with or without others) and to retake possession of the goods, and the customer hereby indemnifies Flexi Staff against any claim, action or damages arising out of any such action and against the costs, expense and outlays incurred by Flexi Staff in taking such action, including any legal costs calculated on a solicitor and client basis.

17. Governing Law

This agreement shall be governed by the laws of Western Australia in force from time to time, and the parties agree to submit to the jurisdiction of the Courts of that State.

18. Invalidity

If any clause or part thereof contained in this agreement shall be judged to be invalid for any reason whatsoever such invalidity shall not affect the validity or operation of the remainder of this agreement and such invalid clause or part thereof shall be deemed to have been deleted from this agreement.

GUARANTEE AND INDEMNITY

1. In consideration of Flexi Staff entering into this agreement with the customer, the persons described as the Guarantor ("the Guarantor") acknowledge the terms and conditions of this agreement
2. The Guarantor jointly and severally agrees to guarantee the due and punctual performance by the customer of the terms and conditions above and guarantee:
 - (i) the payment of any moneys advanced by way of credit to the customer; and
 - (ii) any other moneys due to Flexi Staff by the customer including any fees, costs, disbursements, collection agents fees and solicitors costs calculated on a solicitor and Customer basis.
3. If there is more than one Guarantor, "Guarantor" means all of them collectively and each of them individually and the Guarantor's covenants are joint and several. "Co-surely" includes any other person named as Guarantor or who otherwise guarantees payment of any account.
4. This Deed shall be a continuing guarantee to Flexi Staff for all debts whatsoever and whensoever contracted by the customer with Flexi Staff.
5. Flexi Staff shall be entitled, without notice, of any time, and without in any way discharging the Guarantor from any liability under this agreement to:
 - (i) grant time or other indulgence to the customer;
 - (ii) to accept payment in cash, or by other means of negotiable instrument; and
 - (iii) to treat the Guarantor in all respects as though the Guarantor was jointly and severally liable with the customer to Flexi Staff, instead of being surety for it.
6. The Guarantor undertakes, as a separate and additional obligation, and as a principal debtor, to indemnify and keep Flexi Staff indemnified against any loss that Flexi Staff incurs as a consequence of the failure, for whatever reason, of the due and punctual payment by the customer of any sum of money. Losses include costs, disbursements, collection agents' fees, costs calculated on an indemnity basis.
7. A statement signed by any officer (as the expression is defined in the Corporations Law) of Flexi Staff specifying the amount of the secured monies or of any amount due and owing or covered by this guarantee and indemnity shall be conclusive evidence as to its contents.

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8. The liability of the Guarantors and Flexi Staff's rights under this guarantee and indemnity shall not be impaired, affected, prejudiced or discharged by any of the following events or circumstances which shall be construed separately and independently:
 - (i) Flexi Staff failing for any reason to exercise any right or remedy it may or any time have against the customer or Guarantors: or the obligations of the customer or the Guarantors being illegal, invalid, void or unenforceable for any reason whatsoever;
 - (ii) the absence of any notice to the Guarantors of any default of the customer;
 - (iii) the existence now or at any future time of any legal disability in Flexi Staff or the customer or the Guarantors or any one or more of them;
 - (iv) Flexi Staff waiving or releasing any breach or default by or any obligation of the customer or the Guarantors or any one or more of them;
 - (v) the Guarantors or any one or more of them not having knowledge of any particular transaction between the customer and Flexi Staff;
 - (vi) the death of any one or more of the customers or Guarantors;
 - (vii) the Guarantors not having notice of any neglect, failure or omission of the customer to pay any monies due and owing to the Company or knowledge of the customer's breach or default of any obligation due to the Company;
 - (viii) any variation whatsoever of the terms governing the supply of the Goods to the customer, or any changes in the constitution of Flexi Staff.
9. The Guarantor agrees to charge any land now owned, or acquired in the future, by the Guarantor, to secure payment of all outstanding moneys, and the Guarantor agrees to enter into a mortgage over such land upon being required to do so by Flexi Staff.
10. Any such charge is to be prepared by Flexi Staff's solicitor on the terms and conditions as Flexi Staff's solicitor sees fit.
11. The Guarantor further authorises Flexi Staff to register on absolute Caveat over any land now owned by the Guarantor or in the future acquired by the Guarantor, to secure any sum due at any time during the continuance of the agreement.
12. The terms and conditions of this agreement shall relate to any charge or security imposed by Flexi Staff on the Guarantor.
13. All dividends, compositions and payments received by Supplier from the customer or from his or her or its estate, whether in bankruptcy or otherwise shall be taken and applied by the Company as payments without there being any deduction in respect of any claim arising under this guarantee and indemnity, and the Guarantors right to be subrogated to Flexi Staff in respect thereof shall not arise until Flexi Staff has received the full amount of all its claims against the customer.
14. This guarantee and indemnity shall continue to bind the Guarantor notwithstanding any changes which may from time to time take place howsoever in the composition, shareholding, directors or partners of the customer or Flexi Staff and notwithstanding that the customer may no longer obtain the Goods from Flexi Staff.
15. All Guarantors whose signatures appear below acknowledge that they have been advised by Flexi Staff to seek independent legal advice before giving or executing this guarantee and indemnity.