



1. When do these Terms & Conditions apply?
 - 1.1 These Terms and Conditions apply in relation to the provision of
 - a) permanent employees; and
 - b) temporary employees and contractors; by any of Optimal Resourcing, Optimal Group, Optimal Co.
 - 1.2 You will be regarded as having agreed to all of these terms and conditions if You:
 - a) interview a person for employment who we introduce to You; or
 - b) employ or engage a person we introduce to You; or
 - c) refer a person we introduce to You to a third party who then employs or engages that person; or
 - d) employ or engage a person already working for You under these Terms and Conditions on a new assignment.

This applies in relation to any person we introduce to You within 12 months prior to the date of Your interview, employment or reference.
 - 1.3 If the terms of any letter detailing an individual assignment or temporary contract or job specification differ from these Terms and Conditions, then these Terms and Conditions will apply in so far as there is any conflict.
 - 1.4 Any additional services, other than temporary recruitment or contracting or permanent recruitment will be acknowledged in a separate statement of work between You and Optimal.
2. Definitions

In this Agreement:

 - 2.1 "Candidates" mean those prospective permanent employees we suggest to You for engagement for a particular assignment.
 - 2.2 "Contingent Fee" means those elements of the Recruitment Fees as relating to a search for an appropriate permanent employee for a particular assignment and set out in the annexure to this agreement.
 - 2.3 "Optimal Temporary Employee" means anyone supplied by Optimal to meet Your request for staff for a particular temporary assignment, including a contractor, or a nominated representative of an independent contractor.
 - 2.4 "Placement Fee" means the fees set out in the annexure to this agreement as are relevant to the transition of an Optimal Temporary Employee to either a permanent role with you or a continuing temporary role with you but employed by a third party.
 - 2.5 "Recruitment Fees" means the fees set out in the annexure to this agreement as are relevant to the nature of the Optimal employee or contractor You wish to recruit or have placed together with any further details supplied to You by Optimal upon receipt of a specification for an assignment.
 - 2.6 "Retainer Search Fee" means those elements of the Recruitment Fees as relating to a one-off or ongoing arrangement with You to supply candidates for assignments and set out in the annexure to this agreement and including the Retainer Fee, Interim Fee and Completion Fee.
 - 2.7 "You" means the legal entity to whom these Terms and Conditions have been sent, or any group company or related entity (as those terms are defined by current legislation) who requests the provision of services by Optimal in connection with Your arrangement with us.
 - 2.8 "We" and "Optimal" and "Optimal Resourcing" and "Optimal Group" means Optimal Co Pty Ltd ABN 41 632 669 544
 - 2.9 A 'permanent employee' includes any Candidate directly employed or engaged directly or indirectly by you whether permanently or for a fixed term and employing someone on a 'permanent' basis includes their employment by You for a fixed term.
3. Payment of fees – Permanent employees
 - 3.1 If You wish Optimal to supply You with a permanent employee You should provide Optimal with a job assignment specification and Optimal will provide You with further detail in relation to the relevant Recruitment Fees. If no further detail is provided, the Recruitment Fees set out in the Annexure apply.
 - 3.2 Recruitment Fees are payable by You to Optimal when You:
 - a) employ or engage a person we introduce to You, or
 - b) refer a person we introduce to You to a third party who then employs or engages that person;
 - 3.3 Recruitment Fees apply in relation to any person we introduce to You who accepts a placement with you or another person to whom you provide the Candidates details within 12 months prior to the date of the employment or engagement.
 - 3.4 You agree to notify Optimal and provide us with agreed remuneration details as soon as possible when any person we introduce to You is employed or engaged by You or a third party.
- 3.5 You agree to pay for the following additional items within 14 days of invoice, where requested by You or previously agreed in writing and whether or not You employ a person introduced by us:
 - a) specific advertising, including related artwork and production charges;
 - b) medical, criminal or psychometric checks;
 - c) out-of-pocket expenses incurred by candidates attending interviews; and
 - d) any other special services of a similar nature.
- 3.6 Optimal reserves the right to vary the Recruitment Fees from time to time by written notice to you.
4. Terminating or deferring your arrangement with Optimal
 - 4.1 Optimal reserves the right to charge \$5000 for out-of-pocket expenses (advertising, couriers, profiling, etc.) and our consultants' time, should the position be cancelled or withdrawn.
 - 4.2 Cancellations of advertising work will only be made if given in reasonable time to claim a full refund from the relevant press.
 - 4.3 Contingent Search: If You make an offer of employment or engagement in writing and subsequently withdraw it after acceptance by the candidate (through no fault of the candidate), the applicable Contingent Search Fee will remain payable.
 - 4.4 **Retainer Search:** Where instructions are given by You to us on a Retainer Search basis and You subsequently terminate the instructions:
 - a) the Retainer Fee and Interim Fee, together with any other agreed costs under clause 3.5 above will become payable immediately. If, within three months from cancellation, You request us to commence the identical assignment, a credit will be allowed against the initial Retainer Search Fee.
 - b) In the event that You hire an additional candidate submitted within the short list on a Retainer Search assignment, the appropriate Contingent Fee is payable to us.
 - 4.5 If Your hiring decision is deferred, Recruitment Fees are due and payable if any Candidate referred by Optimal is employed by You, in any position, within twelve (12) months of the initial introduction.
5. Replacement guarantee for Permanent employees
 - 5.1 Should the engagement of any Candidate terminate up to three (3) months from the date of engagement (including notice period), Optimal will endeavour to seek a replacement Candidate at no extra cost to You provided that:
 - a) the first Candidate leaves of his/her own volition and not due to any restructuring or redundancy measures; and
 - b) our invoice has been settled within fourteen (14) days of the invoice date;
 - c) we are given exclusive right to seek such replacement Candidate for a minimum period of 14 days;
 - d) this guarantee only applies to the first Candidates' engagement, not to that of any subsequent replacements and
 - e) this guarantee does not apply to any Candidate engaged by you for a fixed period of 6 months or less.
 - 5.2 Optimal reserves the right not to replace the original candidate in the event of employer misconduct which includes sustainable allegations of sexual harassment, discrimination, misrepresentation of the position, failure to provide safe working conditions, unfair dismissal or the refusal of post-placement servicing by an Optimal consultant.
6. Liability for candidates
 - 6.1 Whilst we will exercise reasonable skill and care in the selection of Candidates, we are not liable for any acts or omissions of Candidates.
 - 6.2 We give no warranty (either expressed or implied) in respect of any Candidate introduced, and accept no liability for any failure of a Candidate to perform or to comply with his/her terms of employment or for any loss, expense, damage or delay howsoever arising from the introduction of the Candidate to You or from his/her engagement by You.
 - 6.3 Insofar as we or any Candidate provides details of a Candidates medical history, present state of health, previous terms and conditions of employment, names and addresses of previous employers, periods of employment, circumstances in which previous employment terminated, criminal convictions, personal details, ability to work in Australia, visas, work permits, qualifications or education generally, we shall have no liability for any loss damage or cost related to the fact that such details



are found to be incorrect or misleading.

- 6.4 Except as required under the Competition and Consumer Act we make no representations and give no warranties expressly or impliedly and to the suitability of a Candidate for a particular position. The offer of employment to a Candidate and the consequences thereof following the introduction of that Candidate by You are entirely at Your own risk.

Temporary Recruitment

7. General conditions and fees – Temporary employees and Contractors
- 7.1 Upon receipt of an assignment specification from You, Optimal will provide You with the relevant Recruitment Fees.
- 7.2 Your order of an Optimal Temporary Employee is taken to mean that You accept both these Terms and Conditions and the Recruitment Fees for that assignment.
- 7.3 Upon receipt of your order Optimal will use reasonable efforts to source and supply You with an Optimal Temporary Employee suitable for the requirements specified. However, Optimal does not guarantee it can fill every order and will notify You if it is unable to fill Your order.
- 7.4 You must pay the Recruitment Fees to Optimal according to the number of hours or days as agreed to have been worked by the Optimal Temporary Employee for You. You must nominate a person authorized by You from time to time to validate timesheets of Optimal Temporary Employees. If You approve the timesheet of an Optimal Temporary Employee, You are approving the hours worked and stating that the work on the timesheet has been done to Your satisfaction.
- 7.5 You must pay Optimal for any approved expenses incurred by an Optimal Temporary Employee in performing an assignment. You must not make any payments directly to the Optimal Temporary Employee. Optimal will reimburse the Optimal Temporary Employee directly for such expenses provided You supply Optimal with original tax invoices to support expense claim reimbursements and confirmation of approval.
- 7.6 Optimal may vary the Recruitment Fees at any time without notice in the event of:
- a) variations to any award or agreement or rate of pay set by Fair Work Australia (or other body) applicable to Your Optimal Temporary Employee;
 - b) insurance premiums or any statutory charges, levies, taxes or other payments Optimal is lawfully required to make or for which Optimal may become liable in respect of providing an Optimal Temporary Employee under these Terms of Business;
 - c) the application to an Optimal Temporary Employee of any entitlement not previously applicable (for example, overtime, penalty rates, notice, redundancy, annual, leave personal leave long service leave or payment for jury duty);
 - d) the increase to salaries of Optimal Temporary Employees who have provided continuous services to You for more than one (1) year.
- 7.7 Optimal has responsibility for the payment in relation to Optimal Temporary Employees of (where applicable):
- a) remuneration;
 - b) payroll tax;
 - c) pay as you go taxation or other required by the Australian Taxation Office;
 - d) workers compensation payments;
 - e) superannuation guarantee contributions.
- However if You fail to pay the Recruitment Fees or any increase to them You indemnify Optimal for any such cost.
- 7.8 Optimal may replace Optimal Temporary Employees on 24 hours' notice to You (not applicable to staff provided through Optimal Group or Optimal Co).
- 7.9 Orders placed for Optimal Temporary Employees will incur a minimum 4 hour booking fee.
- 7.10 Some Optimal Temporary Employees are subject to and have the benefit of awards and other agreements negotiated with Optimal only. The receipt by Optimal Temporary Employees of benefits detailed under any other award or agreement applicable to You or Your workplace, is strictly subject to Optimal's prior agreement.
- 7.11 Optimal Temporary Employees may only be employed for a maximum continuous period of 20 months. If You wish to continue to use the services of a Temporary Employee beyond this period, Optimal reserves the right to alter its fees and/or restructure your arrangement with us.
8. Replacement guarantee for Optimal Temporary employees and Contractors
- 8.1 If You reasonably consider any Optimal Temporary Employee to be unsuitable for an assignment, Optimal will endeavour to seek a

replacement Optimal Temporary Employee and You will not be charged for the first four hours of their time.

- 8.2 This guarantee only applies to the first two Optimal Temporary Employees engaged for an assignment, not to that of any subsequent replacements and if:
- a) The assignment is for a minimum of seven hours duration; and
 - b) Optimal is notified within four hours of the commencement of the assignment; and
 - c) You have no amounts outstanding to Optimal.
- 8.3 Optimal reserves the right not to make the replacement in the event of employer misconduct which includes sustainable allegations of sexual harassment, discrimination, misrepresentation of the position, failure to provide safe working conditions, unfair dismissal or the refusal of post-placement servicing by an Optimal consultant.
9. Supervision and management of an Optimal Temporary employee or Contractor
- 9.1 Optimal Temporary Employees will be employed by Optimal but will perform services under Your direction, control, and supervision. You acknowledge that You have direct supervision and management of Optimal Temporary Employees in the carrying out of each assignment for You, the conditions under which the assignment is performed, and the outcome of an Optimal Temporary Employee's performance.
- 9.2 Management of performance issues is the responsibility of Optimal. You should only communicate directly with Optimal Temporary Employees in relation to performance or behavioural issues if:
- a) it is life threatening or of a serious nature; and
 - b) You immediately notify Optimal of the issue and Your intention to communicate with the Optimal Temporary Employee. You will cooperate with Optimal in relation to any performance or conduct issues, including notifying Optimal as soon as practicable.
- 9.3 You agree not to discuss Recruitment Fees and associated information with Optimal Temporary Employees.
- 9.4 Optimal retains sole authority to
- a) determine rates of pay and entitlements for Optimal Temporary Employees;
 - b) grant leave to Optimal Temporary Employees;
 - c) vary or negotiate the terms of Optimal Temporary Employees; and
 - d) counsel or discipline any Optimal Temporary Employee.
- 9.5 You may not change the hours of work or location of work, the duties (including the classification the duties are performed) or the tasks carried out by Optimal Temporary Employees which You specified in the assignment, unless You first advise us. We reserve the right to change the Recruitment Fees where hours, duties or location have been changed.
10. Cancellation of an assignment
- 10.1 If You wish to cancel an assignment prior to its scheduled commencement You must notify Optimal in reasonable time for Optimal to advise the Optimal Temporary Employee of the cancellation or You may remain liable to pay for the minimum 4 hour booking fee.
- 10.2 Once the assignment has commenced, unless otherwise stated in the agreed details of the assignment, You must provide Optimal with the following periods of notice to end the assignment for any reason:
- a) 24 hours for an assignment of up to and including 12 weeks;
 - b) 1 weeks' notice for an assignment exceeding 12 weeks.
- 10.3 You must pay the Recruitment Fees for all hours worked by the Optimal Temporary Employee up to the time that the Optimal Temporary Employee leaves the assignment.
- 10.4 Only Optimal may direct Optimal Temporary Employees to:
- a) discontinue work;
 - b) be removed from the workplace; and
 - c) have their assignment terminated.
11. Insurance
- 11.1 Optimal will maintain the following insurance policies in relation to Optimal and Optimal Temporary Employees:
- a) Workers' Compensation as required by law; and
 - b) Public Liability for at least \$1 million.
- 11.2 You are responsible for ensuring that the Optimal Temporary Employee is adequately covered by any insurance policy held by You in respect of Your business.
- 11.3 You will not allow or direct an Optimal Temporary Employee to operate a vehicle unless it is covered by current third party and comprehensive vehicle insurance.

- 11.4 Optimal does not accept any liability for and does not maintain any insurance in respect of the use and operation of any vehicle by an Optimal Temporary Employee.
12. Occupational health and safety and employment conditions
- 12.1 You must meet all Your obligations under relevant Occupational Health & Safety ("OHS") laws whilst the Optimal Temporary Employee performs work at Your premises. These obligations include, but are not limited to:
- ensuring that the work environment is safe. This includes being able to demonstrate that hazards have been identified and risks controlled in all plant and equipment, materials and substances, and any activities to be undertaken by Optimal Temporary Employees;
 - verifying that Optimal Temporary Employees have necessary skills, experience and, where required, licenses to perform the services safely;
 - providing adequate induction, safety training and supervision to Optimal Temporary Employees and ensuring that the services are being conducted safely;
 - informing Optimal and the Optimal Temporary Employees if there are any changes to the workplace or the tasks to be performed and not transferring Optimal Temporary Employees to any other role or service without first consulting with Optimal and ensuring that the Optimal Temporary Employees have the knowledge, understanding and skills to perform the newly required tasks;
 - notifying Optimal and any relevant authorities immediately of any work-related incidents or injuries to Optimal Temporary Employees and permitting Optimal be involved in any subsequent incident or injury investigation;
 - consulting with Optimal if requested and co-operating with Optimal in all matters relating to work health and safety of Optimal Temporary Employees.
- 12.2 You must not do anything that may cause us to be in breach of employment or engagement conditions agreed with Optimal Temporary Employees, including enterprise agreements and awards.
- 12.3 In the event of industrial action or a dispute that involves or affects Optimal Temporary Employees, You agree to assist us and do all things reasonably required by Optimal to resolve the industrial action or dispute. This includes giving Optimal or its representatives, access to Optimal Temporary Employees at Your site, and to Your staff where they may be relevant to resolution of a dispute or complaint.
- 12.4 You agree to provide a return to work/limited duty program to Optimal Temporary Employees with restrictions resulting from occupational injuries/illnesses occurring on Your premises.
13. Liability and indemnities
- 13.1 You agree that Optimal is a provider of temporary employees and contractors assigned to work at Your business and location under Your direction, supervision and control. As such, you receive Optimal Temporary Staff at your own risk and Optimal has no responsibility for the means or methods used by Optimal Temporary Employees to perform their work. Optimal is not liable on any legal or equitable basis, including in negligence, for any acts or omissions of Optimal Temporary Employees other than as provided in clause 13.2.
- 13.2 Subject to clause 13.3, 13.4 and 13.5, Optimal indemnifies You against any claim, liability, cost, loss or damage suffered or incurred as a result of:
- a breach of this agreement by Optimal; or
 - bodily injury, death, or property damage arising from the negligence of Optimal or Optimal Temporary Employees occurring within the scope of their assignment; except to the extent caused or contributed to by Your own act or omissions or the acts or omissions of Your employees. This will be Your sole and exclusive remedy with respect to the acts, errors or omissions of Optimal or Optimal Temporary Employees.
- 13.3 You indemnify Optimal against any claim, liability, cost, loss or damage suffered or incurred as a result of any cause other than as provided in clause 13.2.
- 13.4 Consequential Loss: Notwithstanding anything to the contrary in these Terms and Conditions, Optimal shall have no liability whatsoever to You, whether arising under or in connection with the contract or the performance or non-performance thereof or anything incidental thereto (and whether for breach or repudiation of contract, by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (arising in respect of negligence, bailment or otherwise), or on any other basis in law or equity) for loss of use, production, profit, revenue, business, data, contract or anticipated benefit or saving, or for any delay or for any financing costs or increase in operating costs or for any special, indirect or consequential loss or damage.
- 13.5 Limitation of Liability: Notwithstanding anything to the contrary in these Terms and Conditions, the total aggregate liability of Optimal to You, whether arising under or in connection with the contract or the performance or non-performance thereof or anything incidental thereto (and whether for breach or repudiation of contract, by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (arising in respect of negligence, bailment or otherwise), or on any other basis in law or equity) is limited to the Recruitment Fees.
14. Hiring an Optimal Temporary employee or Contractor permanently
- 14.1 If You wish to hire an Optimal Temporary Employee who has worked for You or been introduced to You by Optimal on a permanent basis, a Placement Fee is payable to Optimal prior to an offer of employment being made to the Optimal Temporary Employee. The Placement Fee will be specified by Optimal at the time of hiring and will be based on our permanent fee structure.
- 14.2 The Placement Fee is payable by You in the event of the acceptance of an offer of a permanent job from You or any company related to You (division, subsidiary or parent company) to any Optimal Temporary Employee who has worked for You or been introduced to You during the previous 12 months (whichever is the latter).
- 14.3 Our Replacement Guarantee (Clause 5.1) and Performance Guarantee (clause 8.2) do not apply when an Optimal Temporary Employee becomes a permanent employee.
15. Transitioning an Optimal Temporary employee to a third party
- 15.1 If You wish to transition an Optimal Temporary Employee so that You continue to obtain their services but they are employed by a third party (such as another recruitment agency or panel member), a placement fee is payable to Optimal prior to an offer of transfer of employment being made to the Optimal Temporary Employee.
- 15.2 The Placement Fee is payable by You in the event of the acceptance of an offer of a job from any third party where the Optimal Temporary Employee's continues to perform Services for you during the 12 months from the date of transition.
- General Provisions**
16. Payment terms and GST
- 16.1 Invoices for permanent employees are issued on commencement of employment and are payable within 14 days of the date of invoice.
- 16.2 Invoices for Optimal Temporary Employees are issued weekly and are payable within 7 days of the date of invoice.
- 16.3 Any invoiced sums remaining unpaid after 7 days from the date of our reminder to You to pay will incur interest at a rate of 10% per annum.
- 16.4 All fees are quoted exclusive of GST, which is payable at the prevailing rate in addition to the invoiced sum upon the same date that the invoice is due.
17. Confidentiality
- 17.1 Whilst Optimal employs measures to ensure Optimal Temporary Employees are aware of the need to adhere to current privacy laws and maintains confidentiality and non-disclosure of information for all our clients, the responsibility for protecting your confidential information and intellectual property lies solely with You. Optimal is not liable for any claim arising from or relating to Your confidential information and intellectual property.
- 17.2 All information (written or verbal) regarding candidates must be treated by You as confidential and must not be disclosed to any third party. If a candidate introduced to You by Optimal subsequently gains employment as a result of any such disclosure to a third party, a placement fee will be due and payable by You .
18. Disputes
- 18.1 Pre-condition to Court Proceedings: If a dispute arises out of, or relates to, this agreement including any dispute with respect to breach or termination or a claim in tort, in equity or under statute ('Dispute') a party may not commence any Court proceedings relating to the Dispute unless it has complied with the paragraphs below (except where the party seeks urgent interlocutory relief). This clause does not apply in the



event of non-payment of Recruitment Fees.

- 18.2 Notice of Dispute: A party to this Agreement claiming that a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 18.3 Informal Dispute Resolution: On receipt of that notice by the other party, the parties must endeavour to resolve the Dispute as speedily as possible using informal dispute resolution techniques such as mediation, expert evaluation of determination, or similar techniques mutually agreed upon.
- 18.4 Mediation Rules – A Fallback: If the parties do not agree within fourteen (14) days of receipt of notice (or such further periods as agreed in writing by both parties) about:
- the dispute resolution technique and procedures to be adopted;
 - the timetable for all steps in those procedures; and
 - the selection and compensation of the independent person required for such technique, then the parties agree to mediate the Dispute in accordance with the Mediation Rules for the applicable State.

19. Illegality and force majeure

- 19.1 If any provision or term of these Terms and Conditions or any part thereof becomes or is declared illegal, invalid or unenforceable for any reason whatsoever, such provisions, terms and parts will be deemed to be deleted from these Terms and Conditions provided always that if any such deletion substantially affects or alters the commercial basis of these Terms and Conditions the parties will negotiate in good faith to amend and modify the relevant provisions, terms and parts of these Terms and Conditions as may be necessary or desirable in the circumstances.
- 19.2 If we are prevented from or delayed in the performance of these Terms and Conditions 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, we shall not thereby be liable to You for any breach of obligation under these Terms and Conditions and time for performance of our obligations, shall be extended accordingly.

20. Amendment

These Terms and Conditions may not be amended or supplemented except in writing by a Director of Optimal Co Pty Ltd.

21. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the Laws of Western Australia.

FEES

Total annual Gross remuneration	Percentage of Total annual Gross remuneration payable as recruitment Fees
Up to \$79,999	16%
\$80,000 to \$119,999	20%
\$120,000 to \$179,999	22%
\$180,000 or over	25%

- “Total Annual Gross Remuneration” means total annual remuneration, including base salary, employer superannuation contributions (including compulsory contributions), allowances, inducement or sign-on payments, anticipated commission and bonus earnings and non-salary benefits such as provision of a car. The value of all non-salary benefits will be reasonably determined by Optimal.
- Contingent Fee – If you engage Optimal on a non-exclusive contingent basis to provide you with Candidates for specified assignment, the “Contingent Fee” payable is as set out in the table above and is payable immediately upon the successful candidate commencing their assignment.
- Retainer Search Fees – If you engage Optimal on an exclusive basis to provide you with Candidates for various assignments on an ongoing basis, the “Retainer Search Fee” payable is as set out in the table above and is payable as follows:
 - One- third of the total estimated fee upon acceptance of the assignment (“Retainer Fee”);
 - One-third of the total estimated fee upon presentation of the shortlisted Candidates, or 30 days after acceptance of the assignment, whichever is the sooner (“Interim Fee”); and
 - The balance upon completion of the assignment being when the candidate accepts an offer (“Completion Fee”).
- Placement Fee – Where an Optimal Temporary Employee or contractor is transferred to a permanent or other employment status or contracts directly with You, or an Optimal Temporary Employee’s services are obtained through another source, the Recruitment Fees payable are as set out in the table above.
- Placement Fee for a fixed term contract – where an Optimal Temporary Employee or contractor is transferred to permanent or other employment status or contracts directly with you but for a fixed term then the Recruitment Fees will be pro-rated proportionate to the time period of the initial fixed term, as against the assumption that the Recruitment Fees in the table above apply for a 12 month position. For example, if the initial fixed term is for 6 months then 50% of the Recruitment Fees calculated in accordance with the table above would be payable. If the initial fixed term is extended than Optimal will charge further proportionate Recruitment Fees up to a maximum of 100% of the Recruitment Fees payable when the fixed term is for 12 months or more.